ANGLIA RUSKIN UNIVERSITY

LAND, MINERALS AND ENVIRONMENT IN NIGERIA: CONTESTED LEGAL ISSUES

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ABSTRACT

FACULTY OF SOCIAL SCIENCE, ARTS AND LAW

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LAND, MINERALS AND ENVIRONMENT

IN NIGERIA: CONTESTED LEGAL ISSUES

EMMANUEL EDE EGBA

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This study investigates landownership, mineral and environmental contested legal issues in Nigeria. Examining aims Land Use Act gives governors control over land while Constitution leaves minerals 'only' to the federation, severing minerals from 'state or private-ownership'. The Act authorises compulsory land acquisitions for public purposes including mineral exploration. But Constitution supports individual's rights over movable or immovable property and authorises compensations for compulsory acquisitions. Nevertheless, it makes enforcement of environmental rights non-justiceable by disallowing anyone to enforcing it. The ambiguities in these laws resulted to contests of landownership, mineral control and environmental degradation which the author examines. Effects of splitting minerals from landownership caused non-passage of Petroleum Industry Bill, poor implementation of Local Content Act among others were discussed.

The author adopted doctrinal methodology, implementing three techniques involving finding, reading and updating the laws to give best results. We made comparisons with other legal systems because, the thesis involves diverse legal and social doctrines. This enabled the author to comparatively analyse Nigeria landownership, mineral and environmental regimes. Researcher noted effects of 'mineral-landownership' split and gaps in Nigeria laws which propelled her courts to take on foreign decisions in settling mineral litigations.

We found that non-oil mineral law considers community in mining-lease. This was not provided under 'petroleum' laws. Again, the splitting statutes have led to loss of property and environmental rights in Nigeria. The law did not secure state land rights. It promotes cycle of poverty by giving federal exclusive authority over mineral exploration against state right over land. Compensations for compulsory land acquisitions were not well spelt out because of federal legislative power over minerals and interests it generates. These resulted to landlessness, discontents, contests and litigations.

The researcher concludes that the existing laws cannot adequately tackle issues of landownership, mineral and environmental management in Nigeria thus require reformation.

Key words: Land, Minerals, Environment, Niger Delta, Acquisition, Compensation.

DEDICATION

This work is dedicated to God Almighty who saw to the success of this academic expedition despite the challenges.

To my dear wife Melody, Children: Godswill, Divine and Olivia through whom I found comfort and happiness when the journey became very tough and rough. More importantly, the blessing of Olivia to my family which came during the course of this research was warming and fulfilling.

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TABLE OF ABBREVIATIONS

AC	-	Appeal Cases
AER	-	All England Report African State
All ELR	-	All England Law Reports
All FWLR	-	All Federation Weekly Law Report
ALR	-	American Law Reports
ANLR	-	All Nigeria Law Report
ANSCA	-	Alaska Native Claims Settlement Act
ANSLR	-	Anambra State Law Report
CA	-	Court of Appeal
CAC	-	Corporate Affairs Commission
CAMA	-	Company and Allied Matters Act
CAMP	-	Campbell
CAP	-	Chapter
CB/R	-	Common Bench/Report
CBN	-	Central Bank of Nigeria
CBPR	-	Community-Based Participatory Research
CCHCJ	-	Cyclostyled Copy of High Court Judgement
CDPA	-	Community Development and Participation Agreements
CEPMLP	-	Centre for Energy, Petroleum and Mineral Law and Policy
CFRN	-	Constitution of the Federal Republic of Nigeria
CH	-	Chancery
CHD	-	Chancery Division
CIEL	-	Center for International Environmental Law
CISLAC	-	Civil Society Legislative Centre

CISLAC - Civil Society Legislative Centre

CLR - Commonwealth Law Report

CNN - Cable News Network

Conf. Doc. - Conference Document

CP - Community Participation

CRS - Corporate Social Responsibility

CSAE - Centre for the Study of African Economies

Development Commission

E&P - Exploration and Production

ECHR - European Court of Human Rights

ECOWAS - Economic Community of the West

ECR - European Court Report

ECSLR - East Central State Law Report

ED - Edition

EEG - Export Expansion Grant

EGBSU - Ebonyi State University

EITI Extractive Industries Transparency Initiative

ENLR - Eastern Nigeria Law Report

EP - Equity Participation

ER - English Report

FEPA - Federal Environmental Agency

FGN - Federal Government of Nigeria

FIG - International Federation of Surveyors (FIG Working Papers are short cut to all papers from FIG Congresses).

FNLR - Federal Nigeria Law Report

FRN - Federal Republic of Nigeria

FSC	-	Federal Supreme Court
GDP	-	Gross Domestic Product
GIGA	-	German Institute of Global and Area Studies
GLR	-	Gazette Law Reports
GRBPL	-	Gravitas Review of Business and Property Law
HCs	-	Host Communities
HTTP	-	Hyper Test Transfer Protocol
IMSLR	-	Imo State Law Report in Property (Edict)
IRG	-	Internal Revenue Generation
IYC	-	Ijaw Youth Council
J. Int'l Econ. L.	-	Journal of International Economic Law
JPL	-	Journal of Planning
JSC	-	Justice of the Supreme
KB	-	King's Bench
LFN	-	Law of the Federation of Nigeria
LJ	-	Lord Justice
LPA	-	Law of Property
LPELR	-	Law Pavilion Electronic Law Report
Ltd	-	Limited
LTPTIP	-	Law of Property and Transfer of Interest
LUA	-	Land Use Act
MEND	-	Movement for the Emancipation of the Niger Delta
MMSD	-	Ministry of Mines and Steel Development
MOSOP	-	Movement for the Survival of Ogoni People
MOU	-	Memorandum of Understanding
MTEF	-	Medium-term Expenditure Framework

NCLR	-	Nigeria Constitutional Law Report
ND	-	Niger Delta
NDDC	-	Niger Delta Development Commission
NDDC	-	Niger Delta Development Commission
NDDC	-	Niger Delta Development Commission
NEITI	-	Nigeria Extractive Industries Transparency
NEPC	-	Nigerian Exporters Promotion Council
NESREA Enforcement Agency	-	National Environmental Standard and Regulations
NIGERCEM	-	Nigeria Cement
NIOMCO	-	National Iron Ore Mining Company
NIOMCO	-	National Iron Ore Mining Company
NMC	-	Nigerian Mining Corporation
NMLR	-	Nigeria Monthly Law Report
NNLR	-	Northern Nigeria Law
NNPC	-	Nigeria National of Petroleum Corporation
NSCC	-	Nigeria Supreme Court Cases
NWLR	-	Nigeria Weekly Law Report
OECD	-	Organization for Economic Cooperation and Development of Legal Authorities
OMPADEC	-	Oil Mineral Producing Areas
OPEC	-	Organization of Petroleum of Exporting Countries
OSCOLA	-	Oxford University Standard for Citation
OYSHC	-	Oyo State High Court
P	-	Page
PAPLRR	-	Pan African Programme on Land and Resource Rights

PC	-	Privy Council
PCL	-	Property Conveyancing Law
PIB	-	Petroleum Industry Bill
PSNR	-	Permanent Sovereignty over Natural Resources
PT	-	Part
PTI	-	Petroleum Training Institute
PULP	-	Pretoria University Law Press
QB	-	Queen's Bench
RDI	-	Reports on Foreign Aid and Development
RMRDC	-	Raw Materials Research and Development Council
RMRDC	-	Raw Material Research Development Council
RSLR	-	Rivers State Law Report
S	-	Section
SAP	-	Structural Adjustment Programme
SC	-	Supreme Court
SCNLR	-	Supreme Court of Nigeria Law Report
SDN	-	Stakeholder Democracy Network
SDN	-	Stakeholder Democracy Network
SMMRP Project	-	Sustainable Management of Mineral Resources
SS	-	Sections
UK	-	United Kingdom
UN	-	United Nation
UNCLOS	-	United Nations Convention on the Law of the Sea
UNDP	-	United Nations Development Programme
UNEP	-	United Nations Environment Programme
UNEP	-	United Nation Environmental Programme

UNILAG	-	University of Lagos
USA	-	United States of Nigeria
USAID	-	United States Agency for International Development
VOL	-	Volume
WA	-	West Africa
WACA	-	West Africa Court of Appeal
WALC	-	West African Lands Committee
WNLR	-	Western Nigeria Law Report
WWW	-	World Wide Web

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CHAPTER ONE

BACKGROUND OF THE RESEARCH

1.1.1 INTRODUCTION

Law has no soulmate of any heart; it is simply the heart that beats in the body to ensure it breaths and stay alive. But for the body to stay alive, law must not block all channels of it breaths for its living and growth. The author is researching on this principle to understand the legal implications of tripartite relationship between lands, minerals and environment vis-a-vis the laws regarding their ownership, control and management in Nigeria.

Land has vital natural resources that sustain everything on earth including human beings, plants, animals and waters. It is a fixed asset that aids the production of goods and services. Magel has stated that land hosts virtually all activities that take place around the earth.[1] The control of land, its mineral resources and environmental implications of exploration is the fulcrum of the research, drawing upon a wide area of law generating contentious arguments, controversies, wars and legal battles in Nigeria. The nature of land and types of its components dictate what exist on it and activities that follow it[2] constitutes its meaning.

This research centres on contested legal issues on land, minerals and environment in Nigeria. There are long statutory contests of landownership and mineral resources control between federal government, states and local communities in Nigeria. The contests have become subject of debates, crisis and litigations. These have begun to pressurize oil exploration, environment, unity and legal development of Nigeria in recent time as oil producing region threatens cessation. Land is been compulsorily acquired and minerals are been explored while the environment is being endangered through mineral exploration-pollution. There are proliferations of militant groups attacking multinationals and federal corporations in aggression of losing their land and minerals it creates.

Nigeria has a land mass of about 923, 768 sq KM and much of it is endowed with rich minerals including crude - oil and gas which is massively located in the Niger Delta

[1] Magel, Holger, Sustainable land development and land management in urban and rural areas - about surveyors' contribution to building a better world (2001), International conference on Spatial Information for Sustainable Development FIG Conference in Nairobi, Kenya cited in A. A., Abegune "Land as the Main Cause of Inter-communal Conflicts in Africa: Key Natural Resource against Community Development of Third World Nations?" www.iiste.org. Accessed on 2/03/2014. Oil, non-oil minerals are found in the land - S 44(3) CFRN.

[2] C. Ikpah and N. H. Ibanga, 'Nigeria Mineral Resources: A Case for Resource Control', Available at http://ww.nigerdeltacongress.com. Accessed on 20/03/2014. Ikpah and Ibanga identified what they called five major issues of resource control in Nigeria.

Region.[3] However, a concept of legal framework of property rights and its context is yet to be streamlined.[4] Crude oil production is estimated to about 20 billion barrels a day and about 120 trillion of cub ft of gas. Due to this land mass and the enormity of mineral resources all over the country, the issues of property rights and landownership contest have increasingly become contentious in the recent time. The quest now is on who owns and who controls these natural endowments and what right does a landowner has or exercises over his "land" under the provision of the Nigerian land laws.

The subject focuses on Nigeria ownership model to unravel conflicts surrounding these laws. Land became subject of acquisition since man and environment depend on land and its resources for survival but not devoid of legal and social controversies. In Nigeria, s.1 of the LUA 1978 gives land to state governors, s. 44(3) CFRN 1999 exclusively bequeaths to the federation all mineral resources. S.2 Environmental Impact Assessment Act (EIA) of Nigeria 1992 stipulates conditions for exploring these minerals for aim to protect the environment. These came to coordinate landownership, mineral and environmental management. They govern tripartite ontological rights involved in land, minerals and environment in Nigeria as this research identifies. Their relationship forms the hub of this research that previous works have not covered.

S.36 of LUA gives legal effects to landowners in rural areas and who are in possession before inception of LUA in 1978. Ss.6 and 9 of LUA authorize these landowners with right of occupancy. S.43 of CFRN supports the proprietary rights by stating that everyone has right to own immovable property in Nigeria. This follows Article 17 (1) and (2) of Universal Declaration of Human Right (UDHR) 1948 that provides for an equal and inalienable right to all members of the human family on property ownership rights. By s.44 (1(a-b) of CFRN, no immovable property shall be taken possession or acquired compulsorily except for aim prescribed by law which include prompt compensation on the occupiers. However, s.16 (1)(a) gives federal government exclusive power to harness national mineral resources on land (onshore and offshore) and s 28 of LUA gives states right for land compulsory acquisition. These legal contradictions will be taken by the research especially the compensatory proviso under s.29 of LUA to examine the clear positions of these laws in developing Nigeria legal regime.

[3] See Omoruyi O. and Akande L. 'The politics of Oil: Who owns Oil, Nigeria, States or Communities?'(Nigeria world Publication, January 31, 2001) via http://nigeriaworld.com/feature/publication/omoruyi/oil.html Accessed on 20/06/2014.

[4] Omoruyi ibid p 1.

S 14(1) and (2a-c) of CFRN state that Federal Republic of Nigeria is state based on principles of democracy and social justice, affirming that sovereignty belongs to people. It notes that government derives its power from the people and its duty must conform, observe and apply the provisions of the constitution. But, in practice, some government policies and laws negate these provisos as seen in *Administrators of Abacha Estate v Samuel David Eke-Spiff.*[5] Nigeria courts have always relied on the legality of LUA on compulsory acquisition as held in *Nkwocha v Governor Anambra State*[6] to override proprietary rights. It is seen in *AG Federation v AG Abia States & 35 Ors*[7] on exclusive right of federal government on onshore and offshore minerals, a position that have been corrected in many jurisdictions. This is where Nigeria Supreme Court relied on decision in *United States v State of California*,[8] but the government has not applied the principle on landownership or mineral fiscal (autonomous) federalism as practised by US. The researcher is examining the extent this has impacted in Nigeria laws. The research discusses how the decision has affected property rights in Nigeria. It studies if this incoherency will correct unnecessary government bureaucracies to access land and mineral resources licences. The writer will espouse the comparable implications of this decision on Nigeria legal development with US, UK and Canada.

Ownership and management of land is as old as law or jurisprudence itself. In the hay days of common law, all lands within the territory of the United Kingdom were vested on the Crown. This doctrine of estate is noted in the English common law which was applicable to Nigeria since English common law was introduced to Nigeria by colonization. This system of tenureship signifies the relationship between lord and lesser lord (s) and his tenants. The significant of this is that the one occupying the land refers to as landowner does not in real own that land but merely occupies it as a tenant of the crown or feudal superior.[9] Egwumuo opined; "… if he does not own the land, what is the nature of the interest he enjoys therein?" That, "he enjoys an estate in the land, and an estate is an abstract entity which the law interposes between the person authorized by the law to hold

[5] (2009)2-3SC (Pt. II, 39) 97. 2; (2009) 7 NWLR 97 SC. This was a case where a private land right was revoked and re-allocated to government official (ex-military leader). Estate was raised and at the Supreme Court, the revocation was rescinded. The authority under s 28 of the Land Use Act were seen to be unjustly used. Hoever, the research will examine the extent this is been done.

[6] *Nkwocha v Governor Anambra State* (1983) 4 NCLR 719, (1984) 1 SCNLR 634, (1984) 6SC 62.

[7] *AG Federation v AG Abia State & 35 Ors* 6 NWLR (Pt. 764) 542; [2002] 4 SCNJ 1.

[8] *United States v State of California* (1947) 332 U.S. 19, 332 U. S. 25-26.

[9] J. N. Egwumuo, *Principles and Practice of Land Law* (2nd ed Enugu, Onye Ventures Law Production 1999) p 9.

land and the land which he holds".[10] In African traditional jurisprudence, land and other creatures like water, environment and air are conceived as free gifts to humanity from God. No one could validly claim that he owns land because of its resourcefulness. Land is said to belong to ancestors and generation unborn[11] and it is accorded a strong honour. We will study how legal development puts doubts on practicability of this view.

Like English Jurisprudence, Nigeria has experienced land tenure system where doctrine of estates ownership is detached from the land and attached to a figment of legal imagination termed estate. The writer will examine the imaginary thing that the tenant appears to own that is not in real an ownership of land *per se.* We will look at the possessory power and major thing Nigeria tenant (supposed landowner) enjoys in the land, often termed *seisin* (rooted of title) or feudal precession in England'.[12] The system seemed to have been reviewed, repealed and modified in England however, in the 15th century; it was confined to holders of estates of freehold. Thus, one is *seised* if:

i. (a) He held an estate of freehold;
ii. (b) The land of freehold tenure, and
iii. (c) Either he had physical possession of the land, or a leaseholder held the land for him.[13]
iv. The research will review how much these still subsist in Nigeria and England.

The highest interest one can acquire in the land under Nigerian laws seems to be Right of Occupancy whether customary or statutory.[14] LUA is the utmost development on Nigeria Land Law and a complete revolution of her land tenure. It made most impactful of all legislations affecting Nigeria land. The research engages its definite impenetrability traced to the new age of the law; an aspect of property law's realism as a spotlight of intellectual attention. This applies to the inconsistencies of the Nigeria constitution and dogmatic principles of her land, mineral and environmental laws. Researcher focuses on the Act and its impacts on land use, tenure system, mineral and non-oil mineral laws and the position of courts on these provisions. The writer's analysis of the law will proceed from a neutral ideological base not preoccupied approach in evaluating contemporary issues of land and mineral resources laws in Nigeria. It will consider how positively or negatively this has

[10] Egwumuo, ibid at p. 131.
[11] S. N. C. Obi. *Ibo Property Law,* (Buttersworths African Law Series No. (1962) p 30.
[12] J. N. Egwumuo ibid p 131.
[13] Ibid p 132
[14] Op cit

impacted on the Nigeria land, mineral and environmental laws enforcement. This made the writer to adopt doctrinal methodology.

A case study of Ebonyi and other regional states is made to x-ray the development of Nigeria non-oil mineral laws. This will help to understand the independence of law-making in Nigeria and how desirous its liberalisation appears. Ebonyi State solid mineral control and exploration will be compared with some advanced jurisdictions. The State is naturally endowed with minerals like galena, chalcopyrite, pyrite, quartz and sphalerite.[15] There are however, uncoordinated, indiscriminate and illegal mining activities in various areas of Ebonyi with the intrinsic problem of mine waste dumps, excavation and weathering, land crisis and environmental degradation. Geographically, it has been noted that in weathering environment, many minerals are unstable and will break down as a result of weathering and other chemical reactions.[16] We will review impacts of Nigeria solid mineral laws on the above.

S 20 CFRN opines that state shall protect and improve the environment giving rise to s.2 of EIA 1992. Nevertheless, ss.1, 5, 21, 28 LUA, s.44(1&3) and particularly ss.6(6)(c) CFRN make the s.20 non-justiciable and unenforceable since they barricade people's rights on environment from been enforced in the court of law.[17] We will find if Nigeria has imbibed on the decision of *African Commission on Human and Peoples' Rights (African Commission) in Social and Economic Rights Action (SERAC) and Another v Nigeria (2001).*[18] This is where it was held that all rights in the African Charter are seen as being capable of giving rise to enforceable rights and there is no right in the African Charter that cannot be made effective. The research will take notes of attitudes of advanced and

[15] P. N. Obasi, and B. E. B. Akudinobi. "Geochemical Assessment of Heavy Metal Distribution and Pollution Status in Soil/Stream Sediment in the Ameka Mining Area of Ebonyi State, Nigeria". (*African Journal of Geo-Science Research*, 3(4) (2015)), pp 1 - 7.

[16] P. N. Obasi, and B. E. B. Akudinobi p 1 ibid.

[17] See *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 600) 228.

[18] 155/96 *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v Nigeria.* http://caselaw.ihrda.org/doc/155.96/ accessed 20/6/2015. This was case where the military government of Nigeria has been accused of directly involved in oil production through the State oil company, the Nigerian National Petroleum Company (NNPC) and other majority shareholders in a consortium including multinational corporations. It alleged that these operations have caused a lot of environmental degradation and health challenges coming from the contamination of the environment among the Ogoni People and their land. Nigeria government was appealed to ensure protection of the environment, health and livelihood of the people of Ogoni and to ensure adequate compensation to victims of the human and environmental rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking a comprehensive cleanup of lands and rivers damaged by oil operations among other things.

developing countries[19] who have allowed courts[20] to adjudicate on what Nigeria considers as non-justiciable.[21] The research will propose a reposition in Nigeria legal system to correct this aberration and needs to allow the 'justiciability' of chapter II of the constitution in order to facilitate her land, mineral, environmental legal development.

Land, mineral resources and environment control the world co-existence and interrelations. There are needs for comprehensive laws controlling same and prudent enforcement. The writer will examine how its lacks or poor enforcement result to legal contentions and war between the oil producing regions, government and multinational companies in Nigeria. The region appears to have relied on the legal principles that "he who owns land owns everything on it". They seemed to be adopting an African adage that, "when a provoked houseboy cannot match his wicked master strength with strength, he mains the wicked master's favourite goat". Land, mineral and environmental rights are crucial in shaping local and foreign peace, legal relationship and investments. It needs proper protection, allocation, and regulation of minerals and landownership through law. It will bring benefits and social justice as it raises social, economic and environmental conflicts where wrongly applied.

The research re-evaluates the conflicts of Nigeria control models between the federal, states and local communities. It takes case study of state laws on solid non-oil minerals and impacts of mineral exploration on the environment. It considers her environmental management skills and outlines measures for curbing its challenges through law, teaching and enforcement It will examines land, mineral, environmental laws, rights; customary land tenure, local and international laws on how to formulate better laws in Nigeria. In conclusion, the research will draw attention of imperative factors for an environmental stability, legislative and judicial processes embedded on rule of law. This applies to landownership, oil and gas and non-oil mineral exploration to ensure intergenerational transfer of land, minerals and environment that is free from legal and social conflicts.

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[19] It is now proper for Chapter 2 to be guaranteed as fundamentally demonstrated in the South African (SA 1995) and Uganda (Uganda 1995) Constitutions respectively. See *Education of Uunikrish J.P. v State of Andnra Pradesh* (1992) SC AIR. See also *Tellis v Boyibay* (1992) SC AIR 1858.

[20] See *Bharati v state of Kerala* (1973) 4 SCC 225. India court has justified environmental rights unlike Nigeria, her law has judicially made chapter II unjusticiable on State Policy Directives however, in this case, Hegede and Mukherjea JJ held among other things that" it aims at making the India masses free in the positive sense without faithfully implementing the Directive Principles, it is contemplated by the Constitution (India 1950). See also Nigeria Supreme Court in *Abacha v Fawehinmi* supra.

[21] Such as socio-economic or environmental rights which Nigeria laws appear to ignore. See Chapter II (s 20) CFRN and its s 6(6)(c) that made the above non-justiciable.

1.1.2 STATEMENT OF PROBLEM

Land became a subject of compulsory acquisition by governments worldwide since costliest mineral resources (oil and non-oil) on earth are found on the earth. Examples; crude oil, gold, diamond, limestone even water. It is a precondition for the exploration of all these minerals upon a completion of Environmental Impact Assessment. Note that Nigerian society attached a great value to land since what have been acclaimed the second most vital need in the hierarchy of man's wants stands on land. This value seemed to have been combated by various laws regarding acquisition in Nigeria[22] and 'its effect was observed by Chapter II and s.6(6)(c) CFRN as being non-justiciable'.[23]

The introduction of Land Use Act into the Nigerian Legal system in 1978 gave birth to new forms of acquisition or ownership of land that is far from the radical land ownership. The new regime had it that the highest interest any person can possess in the land is the Right of Occupancy whether customary or statutory and whether that is granted or deemed to be granted by the Governor or Local Government Chairman as the case may be.[24] The unfortunate thing here is the Land Use Act has failed to define the meaning of the phrase, *"Right of Occupancy".* But the definition by the Commonwealth in *Manyara Estate Ltd v National Credit Agency*[25] had it as "a title to use and occupy land, a purely usufructuary right" From this, it is noted that the categories of interest or ownership under the Land Use Act like; Assignment, Lease, Sublease, Mortgage are only for the use and occupation of the land affected by Right of Occupancy.

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[22] P. S. Ogedengbe, "Compulsory acquisition of oil exploration fields in Delta State, Nigeria: The compensation problem", Journal of Property Investment & Finance Vol. 25 No. 1 (Obafemi Awolowo University, Ile-Ife, Nigeria) (2007) Pp. 62-72. LUA s 5(1) a-b on the Land Use Decree No. 6', Federal Government of Nigeria (FGN) Gazette Supplement, Federal Government Nigeria in March 1978. See also K. OMEJE, "Oil Conflict in Nigeria: Contending Issues and Perspectives of the Local Niger Delta People" (New Political Economy), Vol. 10, No. 3, (September 2005); *Nkwocha v Governor of Anambra State* (1983) 4 NCLR 719, (1984) 1 SCNLR 634, (1984) 6SC 62; *Otti v Attorney General of Plateau State & Ors* (1985) HCNLR 787; *Oil Field Centre v Joseph Lloyd Johnson* (1986) 5SC. 30 at pp 339-340.The CFRN 1999 ss 43, 44 and provisions of LUA authorize property ownership and acquisitions by Nigerians. However, none spelt out this right with clear understanding. It needs to be noted that so many Nigerians had paid meekly to this price of compulsory acquisition and none or poor compensation with degrading environment.

[23] S 20 provides that; ''the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'', regrettably, the same law swotted itself in s 6(6)(c) where it emphatically stated that ''the judicial powers vested in accordance with the foregoing provisions of this section, shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.'' This is a big confusion that the researcher intends to unnerve.

[24] LUA ibid. See ss 5 and 6. Although, local chaiman has not been seen to exercise this power in practice.

[25] *Manyara Estate Ltd v National Credit Agency* (1970) EA. 177.

Ss 21 and 22 of LUA outlaw the alienation of Right of Occupancy by assignment, transfer of possession without an outright consent of the Governor or the approval of the Local Government.[26] Although, anyone can own a deemed statutory Right of Occupancy under s 34 of the Act if he had been in occupation of the land prior to the commencement of the Act. However, the holder of such deemed statutory Right of Occupancy shall equally apply to the Governor for the grant of Certificate of Occupancy[27]. The Local Government may grant customary Right of Occupancy pursuant to s.6 which gives the holder the deemed customary Right of Occupancy under s.36 thus, establishing customary law and its validity in Nigeria.

Therefore, occupants of land in Nigeria appear like birds perching on another one's tree to build nests but on mercy of the authentic owner who may cut it or convert it to other uses leaving the birds homeless at any time. This applies under ss 21 and 22 of LUA. Again, whereas the state Governor is empowered by s.9 to issue Certificate of Occupancy for an already statutory Right of Occupancy, there is no such equivalent provision in the Act authorizing Local Government Chairman to issue such Certificates on the customary basis. Any such grant by Chairman has no statutory warrant. An amendment of s.6 is therefore eminent to authorise such powers expressly by chairmen. Vital collateral to the grant of Customary Right of Occupancy is the certificate. This will be evidenced by such grant. Having in mind that mineral is mostly found in the rural areas, it may give occupiers more benefits. It will amend the gap in the process of compensation procedures as the Certificate shall entitle any victim of land revocation better ground to seek for reward. It will stop state governors from been sole administrators of land in Nigeria.[28]

In Nigeria, the governments' legitimacy on the acquisition of lands for overriding public interest was made manifest by s 28 of the LUA.[29] The activities take two methods; while

[26] S 21 says, ''It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever (a) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or (b) in other cases without the approval of the appropriate local government while s 22 concludes thus; 1 (1), "It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained…''

[27] See LUA s 9

[28] See ss 1, 5, 21, 22 and 28. Revocation and acquisition of land for oil exploration is ubiquitous in the Niger Delta. Note, where oil is found, federal government might overrides these provisions. Thus, there is need for the National Assembly to change the face of these legislations as this work would recommend.

[29] Land Use Act s 1 opines ''Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation is hereby vested in the Governor of that State, and such land shall be held in trust

the land legislations of the nation determine the legality of the land acquisition of lands for "overriding public interest"[30] that of various communities take part of land allocation being regulated by customary Laws of each locality. More so, management of the environment upon acquisition of land for sustainable growth became imperative in Nigeria as this was not conceived by these laws. This is because; the law on overriding interest did not define or visualize the importance of the environmental management as acquisition is either for oil exploration, industrial development or urbanization.

It is important for land and environment to be planned before acquisition takes place especially for purposes of mineral explorations. This will enhance the environment from been bogged by high stride of oil and solid mineral industrialization. Often, government does not consider the plight of environment or poor citizens before acquiring their land, neither has the law specifically outlined the proper procedure for acquisition. Government sometime acquires land and allocates same to individuals, contradicting the principles of 'overriding public interest'.[31] The research will focus on property ownership, different land acquisitions, mineral-landownership split implications[32] and environmental issues in Nigeria. The research intends to make doctrinal comparisons with other nations to address issues concerning Nigerian laws on the subject.

1.1.3 RESEARCH AIMS/OBJECTIVES

i. To systematically evaluate ownership of land, mineral and environmental contested legal issues in Nigeria and examine property rights and government powers to compulsorily acquire land for public purposes.

ii. To provide knowledge based research guidelines for mineral and landownership through decision of *AG Federation v AG Abia Stat & 35 Ors*.

iii. To reassess relevance of property rights and mineral resources administration, considering its splitting implications by the law and examine revenue allocation sharing formula considering s. 1 LUA, ss. 44 (3) and 162 CFRN.

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and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act…''

[30] S 28 LUA.

[31] *Administrator of Abacha Estate v Samuel Eke-Spiff* supra. The then State Military Governor revoked a private land and re-allocated it to then Head of State. The purpose of s 28 of LUA was held to be for overriding public interest.

[32] Public Lands Acquisition Acts cap 167 of 1917, State Lands Acts, Land Use Act No. 6 of 1978, Oil pipeline Act of 1956, Constitution of the Federal Republic of Nigeria 1999. See Ogedengbe P.S., ibid p. 62.

iv. To examine multi-jurisdictional laws and policies governing oil and non-oil minerals, landownership and environmental management.

v. To appraise mineral exploitation effects – pollution, gas flaring on environment and effectiveness of Nigeria law on environmental rights under s.2 EIA, s.20 (chapter 2) & s.6(6)(c) CFRN and study its non-justiciability[33] impacts.

1.1.4 RESEARCH QUESTIONS

1. Why have land, mineral and environmental laws in Nigeria proved such conflictual and instable disciplines and have these instability prices of laws now threatening the disciplines with philosophical and epistemological liquidations?
2. Who owns Nigeria lands and its 'natural constituents' and what is the rationale behind land nationalisation, mineral split and gaps created by it?
3. Can mineral resources be considered part of land and what control can a landowner exercise over these natural resources in Nigeria and whether governor's assignment make a Certificate of Occupancy irrevocable under the Land Use Act?
4. To what extent have natural resources been harnessed and distributed as best as possible to serve the common good as the constitution provides and what is the nature of Nigeria laws on land acquisition and qualifications for compensations?
5. What is required to make the protective mechanism of rights to land, its resources explorations and environmental sustainability more productive in Nigeria and to what extent does it impacts on international conventions?
6. How can oil exploitation and environmental management in Nigeria be 'evolutionalized' to meet international best practice?
7. What is the general position of the Nigerian laws on environmental protection and to what extent can citizens' environmental rights be protected?

1.1.5 SIGNIFICANCE OF THE STUDY AND CONTRIBUTION TO KNOWLEDGE

The research centres on conflicts of laws of land, minerals and environment in Nigeria.[34] It is a well-known fact that land became subject of acquisition and conflicts since man and environment depend on land and its resources for survival. In Nigeria, the issue borders on position of s.1 of LUA 1978 which gives land to state governors, s.44(3) of CFRN 1999

[33] These will enhance academic, researches, social, economic and nation building globally and Nigeria in particular.

[34] There are statutory contentions of land and mineral resources ownership between federation, states and communities in Nigeria which the research tries to resolve with this work.

that bequeaths to the federation all mineral resources. S.2 EIA 1992 then stipulates environmental regulations and conditions for maintaining good environment while exploring these minerals. These laws were made to coordinate landownership, mineral control and environmental management. It governs what this research identified as tripartite ontological rights and relationship between land, minerals and environment. Their relationships form the major focus of this research that previous works have not covered. Unarguably, land, mineral resources and environment control the world and its co-existence. Therefore, there are needs for comprehensive laws controlling same and its prudence enforcement. The research has found that the significance of common law suggests that one occupying a land ordinarily referred as 'landowner' does not own the land or its 'appurtenances'. He merely occupies as tenant of the crown. [35]

The writer identifies five research theories that underpin this research and which contribute to knowledge, law development and improve academic research:

i. The constitutional provision theory of mineral-landownership split, mineral exclusive ownership (under s.44(3) CFRN & *AG Federation v AG Abia State)* was remodelled through doctrinal research and expansion of property right under s.43 CFRN proposed.

ii. The Land Use Act theory of landownership, alienation and compulsory acquisition model was re-examined in the light of compulsory purchase and occupier owns all principle which was identified to grow new law book.

iii. The ambiguity of African traditional landownership theory under s.6, s.9 & s.36 LUA and 43 CFRN was re-examined and its liberalization proposed.

iv. Importance of legislations on oil exploration, contractual arrangements, privatisation policy, solid-mineral diversification were considered and new property rights of mineral-landownership unification rediscovered;

v. Impacts of exploration of minerals on environmental sustainability been reassessed through international laws and more realistic regulatory approach to provisos of Nigeria non-justiciability discussed. Also needs for domestication of international conventions and liberalisation of s 12 CFRN to give state legislatures right over international conventions/treaties revealed.

[35] Upon colonization, doctrine of mineral and landownership of the crown from English common law was applied to Nigeria. State governor under ss.1 & 28 LUA in case of Nigeria.

The research observes mineral resources control as the major cause of contentions that previous literatures and existing laws have not settled. The common law approach is alien to the customary law originally practiced in Nigeria. This was when one who owns land owns everything upon on it. A novel concept this research termed, African traditional land ownership theory. The research propounds this theory to establish the validity of customary law on landownership in Nigeria and draws its authority over minerals. This is to avert possible extinction of property right in nearest future in Nigeria. It relates to it as it affects control of mineral resources, its appurtenances, value and customary heritage in Nigeria while comparing the rules with other jurisdictions. Researcher undertook it as medium to settle land conflicts across Nigeria through legal frameworks especially where such land contains mineral resources.

Rights to land, mineral resources, and good environment provided under the LUA provisions, ss.20 and 43 of the constitution are being threatened by laws and man's daily activities. This makes the study for tripartite relationship that exists between land, mineral and environment imperative. The research makes findings on the correlation between lands, mineral resources and environment. The answers provided will significantly contribute to knowledge and modes of settling unanswered questions of who is entitled to what in 'land' in Nigeria by law or convention. This is because the interest in mineral exploration from 'land' determines the distribution formula of the revenue accruals – s.162 CFRN and *AG Federation v AG Abia State & 35 Ors.*

1.1.6 THE GAPS

The research identified the following gaps in Nigeria laws, practices and previous literatures:

i. The fusion of the Land Use Act in the constitution by s 315 makes implementations, enforcements and amendments of both provisions conflictual. There are duplications of duties between the Nigeria constitution and the Act. Again, the Act is federal legislation passed to state.

ii. There is controversy between s 1 of the Act which gives the entire land to state governor and s 44 (3) of the constitution that bestows all minerals to federation without giving proper foundation on how this could be governed in Nigeria.

iii. There are conflicts of proper and equitable implementation or enforcement of s 28, s 29 of LUA and s 44(1) of the constitution. The former lay conditions for compulsory land acquisition and compensation while the later prescribes land

acquisition without adherence to the law. The present provisions of these laws provide for ostensible land maladministration, personal enrichment (as found in *Abacha v Eke-Spiff* where state government compulsorily acquired private land and reallocated it to the former Head of State) or may be used for political persecution as the case of *Nkwocha v Governor Anambra State* where an opposition was cowed by compulsory acquisition provision.

iv. S 43 of the constitution supports ownership of movable and immovable property while s 44(3) makes drastic turn leaving it impracticable. Under, ss 1, 5, 6 9 and 21 of the Act, landowners do not have rights over their land though, ss 6 and 36 LUA and s.43 CFRN appear to support such rights.

v. S 20 CFRN provides that the government should offer the citizenry with good environment while s.6(6)(c) makes the enforcement non-justiciable thus stopping courts from entertaining such case. No anyone questions the content of chapter II CFRN despite huge social and environmental issues from petroleum exploration in Nigeria. States legislature have no rights over international environmental conventions under s 12 CFRN.

The state Governor takes over all land from the original owners by s 1 of the Act. He replaces the traditional rulers as trustees of the land. There is confusion if lands still belong to those owned them before the land use decree of 1978. The same thing applies to oil and solid mineral resources. The federal government is only interested in petroleum and does not give much attention to non-oil mineral activities. The mineral law does not permit states to make laws on non-oil and skeletally considers community involvement. This was not considered in oil laws. This has left local miners and landowners to take over solid minerals. The gaps in previous literatures include their inability to fashion out measures to ends poor wealth distribution modalities prescribed by mainstream neoliberal economists which have only succeeded in producing an inequitable society where the rich get richer and the poor get poorer under s 162 of the constitution. There is no specific dimension of what is owned by the states in land. Rights and control of federal government over mineral resources under Nigeria laws were muddled by previous literatures. Thus, what was primarily considered in *AG Federation v AG Abia State & 35 Ors* was land rights from where oil mineral accrue which determines quantum of revenue allocation and not just rights to oil mineral.

The Nigeria constitution provides for federal system but that is yet to be enforced or implemented by the government. Nigeria court relied on American judicial decision on *AG Federation v AG Abia State & 35 Ors* without giving consideration that the decision was made under US constitutional federal system where state autonomy and mineral ownership exist. It would be better for the court to consider Latin America practices in Brazil, Argentina, Bolivia; Venezuela with similar mineral ownership models. Previous literatures relied solely on political solution rather than social-legal solution to mineral and landownership. The contention is matter of law and needs to take legal background as this research explains. Previous literatures were only critiquing these issues but did not identified how best to tackle them. This research has taken on a doctrinal approach to systematically and empirically establish a way out. The model of enforcement, policy formulation, adjudication and implementation in Nigeria weaken her entire legal system. These gaps exist in land, mineral and environmental issues as this writer identifies in this research.

1.2 RESEARCH METHODOLOGY

INTRODUCTION

The study adopted a doctrinal research methodology[36] known as 'black letter law'.[37] This will be used because this thesis involves legal doctrines and interpretations. Although legal scholars may not often utilise non-doctrinal methodology, the work will consider briefly comparative legal analysis. This is to give the researcher wider understanding of contentious issues surrounding landownership, mineral and environmental rights in Nigeria. It will guide the interpretation of the law on local communities' interests in view of mineral exploration and their legal rights in this research. This covers segment of mineral rights, oil revenue allocation, environmental challenges, split of mineral-landownership, non-inclusion of state or local communities' participation in oil management, litigations and position of Mineral Act on communities in Nigeria. Writer's critical legal investigation will constitute the heart and choice of doctrinal approach. The research questions identified were tackled mostly through legal doctrinal laboratory test.

[36] Doctrinal Research is research approach 'asks what the law is on a particular issue. It is concerned with analysis of the legal doctrine and how it has been developed and applied. This type of research is also known as pure... policy or law reform based'. See S. K. Jahangir Ali 'Doctrinal Research in Law Field,' http://www.legalindia.com/doctrinal-research-in-law-field/. Accessed 14/4/2016.

[37] Black Letter Law refers to "the basic standard elements or principles of law, which are generally known and free from doubt or dispute. It describes the basic principles of law that are accepted by a majority of judges in most states". It is basic, settled tenet of law, notorious and well known. See Duhaime's Law Dictionary via http://www.duhaime.org/LegalDictionary/B/BlackLetterLaw.aspx accessed 14/4/2016.

Doctrinal methodological approach was employed in the examination and analysis of legal issues raised since the research looked on national and transnational legislations and case laws. This enhances the reasoning of the researcher in the legal arguments. It will also allow for conceptual framework as an analytical tool to examine several variations and contexts of land and mineral ownership laws in Nigeria. We use it to conceptualise distinctions and organize ideas in legal studies. It will consider the making and interpreting the laws, law reforms, commissions and government roles in executing laws. The approach will support the examination of the political, economic and social importance of law in a society. The results will highlight the practical usefulness of the law and its significances in a given legal theory. The adoption of doctrinal approach and successful completion of the work will make the thesis a new legal consult.

DOCTRINAL RESEARCH METHODOLOGY

Doctrinal or Black letter methodology research is concerned with the systematic presentation and explanation of legal doctrines and is therefore referred to as the 'expository' tradition in legal research. Such as statutes, regulations, courts rules, case laws. These are often generated by legislatures, administrative agencies or courts. Aim of legal research is to find legal documents that will aid in finding solutions to legal problems. It developed spontaneously within the common law jurisdictions.

It include:

i. Using primary sources through compilation, comparisons and analysis of relevant national and transnational land and mineral laws, environmental laws, judicial decisions; treaties, protocols and conventions to provide clearer understanding of law and its impacts in a society. This is because legal system is a precedent based that touches on judicial pronouncements, statutes and common law.

ii. Using secondary sources such as journals; policy documents; text books; articles, commentaries; law reviews; law libraries; website blogs; multimedia; internet sources, tutorials; seminars; periodicals; seminar papers, research guide publications; dictionaries; encyclopedias; electronic sources, newspapers and magazines; field/sites visits and on opinions of experts in the sector help to know the work of law and its pedigree in keeping the society going, correcting the wrongs or anomalies therefrom and reactions from the citizenry.

The merits:

a. Legal research methodology denotes the exposition, the description or the explanation and the justification of methods used in conducting research in the discipline of law. It provides quick answers to the problems posed.
b. Doctrinal is library based research mostly employed by those undertaking research in law. In a nutshell, library-based research is predicated upon finding the 'one right answer' to a particular legal questions or set of questions. Thus, the methodology is aimed at specific enquiries in order to locate particular pieces of information and update the law accordingly.
c. It helps legal researcher to synthesize various laws, gaps, or ambiguities, arguments and prepare a better outcome to correct wrong laws.
d. It looks at the aim of preferred value and problems posed by the gaps and goals law intended to achieve which it failed and invites the legislatures to plug them through amendments.
e. Doctrinal approach is more manageable and predictable because it focuses on established sources.

Doctrinal research methodology to S. K. Jahangir Ali, is a research approach that 'asks what the law is on a particular issue. It is concerned with analysis of the legal doctrine and how it has been developed and applied. This type of research is also known as pure... policy or law reform based or 'black letter law'.[38] Duhaime's Law Dictionary refers to it as "the basic standard elements or principles of law, which are generally known and free from doubt or dispute. It describes the basic principles of law that are accepted by a majority of judges in most states". It is basic, settled tenet of law, notorious and well known".[39] This approach will be involved because this thesis involves legal doctrine of interpretations and enforcements. It combined doctrinal and comparative legal analysis but devolves prominently on doctrinal approach to unravel the legal contentions within the framework of the research subject. Note that comparative Law research is the study of the relationship between legal systems or between rules of more than one system, their differences and similarities. It is a method of comparing different legal systems, and such comparison

[38] See S. K. Jahangir Ali 'Doctrinal Research in Law Field,' http://www.legalindia.com/doctrinal-research-in-law-field/. Accessed 14/07/2017.
[39] See Duhaime's Law Dictionary via http://www.duhaime.org/LegalDictionary/B/BlackLetterLaw.aspx accessed 14/7/2017.

produces results relating to the different legal cultures being analysed[40] and plays good understanding of foreign legal system.

Black letter justification gives the researcher wider view to comprehend the contentious laws and states or local communities' interests in the research area noting state's social contract obligations and how citizens feel about it. This important segment touches on landownership, mineral rights, oil revenue allocation, environmental challenges, non-inclusion of state or local communities in oil management and other things seen as causes of litigations, intra wars and inter-wars between the governor and the governed in Nigeria. Thus, the issue of how customary land rights present itself in Nigeria and other developing countries before statutory provisions will be systematically synthesised and comparatively analysed in a doctrinal methodological manner. Law can move with supreme skill and graceful fluidity thus, keeps changing. Often, there are with split, conflicting decisions or no binding authority. In this instance, the research will undertake the law of other jurisdictions with application of creative analysis to the national existing case laws creating argument based on first legal principles.

In taking on doctrinal research, we adopt three technique approach as advocated by Gasiokwu.[41] Note, black letter methodology concentrates on the 'letter of the law',[42] an analysis of technical and coordinated legal rules in primary sources. This is to reduce the study of law to an essentially descriptive analysis of large number of questions and confusions in legal research. The approach helps to understand the conflicts of Nigerian land, mineral and environmental laws. The three-way approach include:

1. To find the useful law;
2. To read the law; and
3. To update the law through the research.[43]

[40] In this age of globalization and the complexity and intertwinement of international public and private law, it plays an increasing important role in international harmonization and unification of laws, thereby leading to more international cooperation and a better world order. See https://www.peacepalacelibrary.nl/research-guides/other-subjects/comparative-law/ visited 20/8/2017.

[41] M. O. U. Gasiokwu, Legal Research and Methodology: A – Z of writing theses and Dissertations in a Nutshell, Published by Chenglo Ltd, Enugu Nigeria (2004) Pp 48 – 51.

[42] Law Teacher. Writing Law Dissertation Methodology. (November 2013). Available from: http://www.lawteacher.net/law-help/dissertation/writing-law-dissertation-methodology.php?cref=1. Accessed 9 October 2015.

[43] M. O. U. Gasiokwu ibid

1. **Finding useful laws** – Kunz and Schmedemann have noted that 'finding the law is an important part of legal research, but ability to analyse what you have found and reach a conclusion or formulate an argument based on it is just an essential'[44] ingredient. The ability of finding useful laws comprised understanding;

   (i) the descriptive words, or facts approach;

   (ii) the known authority approach and

   (iii) the known topic[45] approach which will review Nigerian land, mineral and environmental legal concepts noting their gaps, exploration and management skills. Examination of Nigeria land and mineral legal lacunas through diverse jurisdictions to updating Nigeria laws accordingly. As such, it focuses on the law in books rather than the law in action. Nigeria laws are often practiced differently from its letters in the book.

i) Descriptive word approach – This approach by Gasiokwu[46] describes the vital ingredients and factual aspects starting with primary authorities, usually, legal frameworks or relevant statutes and case laws. The researcher checks these statutes with administrative or quasi regulations and previous court decisions. Description of relevant laws comes from understanding law-making and judicial processes involved through legal precedents. This is importance because Nigeria has no special environmental courts, professionalism or stipulated mechanisms for compulsory land acquisition for mineral purposes. Compensation appears a novel issue in the country due to the long military era.

ii) A known authority approach – This means undertaking the above steps sequentially with its proper education of noting relevant statutes, administrative or quasi regulations. The researcher will start the study by reading statutes, case laws and administrative regulations noting their gaps in Nigeria respecting the subject of research. The process will interpret each case on the basis that it forms a system of inter-related rules rather than a separate decision.[47] The known topic approach will then became essential. As barrister, solicitor,

[44] Kunz and Schmendemann. The Process of Legal Research (Boston; Little, Brown and Company) (1989) pp 6 -7.
[45] M. O. U. Gasiokwu ibid
[46] ibid
[47] Law Teacher ibid.
This is because subject for research naturally relate to pure law and law in relation to society.

lecturer, environmentalist and researcher, practice and teaching, have given the researcher interests to work on these laws[48] understanding their concepts. Where the research finds gaps, it will make doctrinal comparisons with other transnational jurisdictions on appropriate statutes with particular interest in the UK, US and Canada.[49]

iii) **Known Topic Approach** – This is rarely used. It is applicable if the researcher is confident and has full knowledge of the area of the problem where research lies.

2. **Reading the law** – When relevant law is found, the first necessary next step is to read it and establish significances of the reading materials. It helps to know the importance of a particular law to a research problem. Gasiokwu methodologically referred to this as "internal evaluation"[50] which helps to determine laws' status and validity. This includes amendments and overruling order by superior courts making the previous position non-applicable. Reading takes centre stage of legal research and it helps researcher not to rely on outdated authorities.

3. **By updating the laws** – This is to determine and ensure that legal rules applied in the research are valid. Nigeria still depends on some of her colonial laws, rules or applications. Most of these laws are obsolete, some being reviewed and renewed while others have been repealed and thrown into bins in England. The choice of this approach directs the researcher on how best to source the primary resources of law.[51] When legal authorities are updated, the new laws are rediscovered through internal evolution and current treads involve. It is done by reading government gazettes, law reviews, law reports, federal and state statutes or publications,[52] courts proceedings and procedures of land allocations and acquisitions; mineral lease and exploration with environmental challenges. It considers customary laws and conventions[53] of Nigeria[54] practices. It is important to this research because customary law is one of the sources of law.

[48] LUA; Petroleum Act, 1999 constitution of Nigeria as amended; FEPA, Oil Pipeline Act among others. Of great importance here are the Nigerian laws on land and mineral ownership, acquisition, control, mineral exploration with environment issues.

[49] UK was the Nigeria colonial masters and Nigeria copied US federal system while Canada has successfully dealt with issues of property, land rights and mineral resources management through aboriginal custom.

[50] ibid p 50.

[51] Gasiokwu p. 49.

[52] Such as 'Federal Statutes in Force' by Oduba F. A. See Gasiokwu ibid p. 51.

[53] Special attention will be paid to the various regions where land and mineral contest is most high.

The research has found that property rights and landownership is a reflection of Nigeria cultural values therefore, customary rights should form part of her legal system. As noted, mineral resources' ownership on the land is the primary cause of conflict as a result of mixture of the country legal system. The native law and custom forms part of the state laws and it expresses a wide range of positive cultural values capable of impacting on the cultural lives of the people. It can revitalise the economic strength. Also, if the values are imbibed by the citizens and recognised by the law, they can lead to cultural change in behaviour or increased cultural awareness and sensitivity which can positively affect the environment. Given the nature of the research, the adopted doctrinal methodology is analytical and expository. The approach is useful to review the concepts of traditional ownership methods of land or mineral[55] and how the environment was customarily protected prior to the English laws in Nigeria.

Ss.43 and 44(1) of the Nigeria constitution support ownership of movable and immovable property while s 44(3) makes a drastic turn thereby making it impracticable and unenforceable. Under, ss 1, 5, 6 9 and 21 of the LUA, landowners do not have total control or rights over their land. But, ss 6 and 36 that appear to sustain such rights were made imprescriptibly by the Act by its ss 1, 22 and 28. The law seems confused here, thus, probating and abating. Her brain has some bottlenecks which slow its responses down when it has to make decisions interpretation and enforcement in quick succession. For psychologists, this kind of mental shortcoming is like a crack in a wall. This is because; law is like human in nature. It talks, it prohibits, it acts, and it punishes but cannot undertake to do them at once. A new dimension is seen in England and Wales where there are laws that laid down this issue in clear and an unambiguous manner. Land Compensation Act 1961[56] s. 5 generally requires that the owner of an interest in land whether freehold, leasehold or easement receives payment for the "value of the land... if sold on an open market by a willing seller". In Nigeria, by ss 28 and 29 LUA, state

[54] African Traditional Land Ownership Principle Seizure (land inheritance extinction). Nigeria Constitution s 280 provides for Customary Court of Appeal for every state while s 282 provides for the jurisdiction of the court in civil proceedings involving question of customary law. Modern day customary law in Anglophone Cameroon unlike Nigeria has undergone a severe revolution. The provision of s 27(1) of High Court Rules of Cameroon 1955 which governs enforcement of customary law had objectives of guaranteeing the survival of customary law in Anglophone Cameroon and only eradicating offensive customary practices.

[55] Where customary law passes the three tests of repugnancy, public policy and incompatibility, such custom should be considered legitimate law in Nigeria.

[56] Court have upheld this view in *Re Ellenborough Park* ([1955] EWCA Civ 4, [1956] Ch 131) and *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] UKPC 7).

governor has discretion of compensation and can invoke compulsory acquisition proviso with or without notice.

This doctrinal analysis uses interpretive approach to review relevant sources of law and construct the protection of diverse sets of property rights that result to conflicts between the multinational oil companies, federal, states and local communities in Nigeria. Also, this is how that hampers excellent mineral exploration and productivity as a result of the government's overriding powers and control of land and minerals in local communities.[57] As the core research question involves a comparison of the strength of proper legal rights available to federal, states and local communities or individual land occupiers, the doctrinal analysis will assess these different sets of legal rights. It will examine their strengths, based on indicators relating to the state's overriding power of acquisition.[58] It also explores whether legal devices shelter mineral exploration from regulatory change.[59]

Questions about methodology in legal research have been largely confined to understanding the role of doctrinal research as a scholarly discipline. This involves asking questions not only about coverage area but, fundamentally, questions about the identity of the discipline. Is it mainly descriptive - vivid, hermeneutical (such that concerns with interpretation, such as Bible or Koran, nature or literary texts - a method or theory of interpretation),[60] or normative?[61] It could be explanatory by establishing, relating to or deriving from a standard or norm, especially of 'behaviours' etc. Because law is all encompassing, legal scholarship has been torn between grasping the expanding reality of law and its context. Besides, it reduces its complexity to manageable proportions. Some writers have concluded that the purely internal analysis of a legal system, isolated from any societal context, remains an option. This is still seen in the approach of the developed academy.[62] But as law aims at ordering society and influencing human behaviour, this approach alone is felt by many scholars to be insufficient[63] with respect to developing nations. However, critical legal studies theory challenges and overturns accepted norms

[57] This was noted in I. McLeod, *Legal Method*. Palgrave Macmillan Law Masters (9th edition) (2013).
[58] See LUA s 28, the Petroleum Act s 1 and CFRN s 44(3).
[59] W. L. Twining, "Comparative law and legal theory: the country and western tradition." (2000): 21-76.
[60] This is emphasizes subjective of interpretations in the research and meanings of texts, art, culture, social phenomena and thinking.
[61] This differs from descriptive studies because its target is not only to gather facts but also to point out in which respects the object of study can be improved.
[62] J. Husa, Comparative Law, Legal Linguistics and Methodology of Legal Doctrine. In: M. V. Hoecke, (ed) Which Kind of Method for What Kind of Discipline? Hart Publishing Ltd, United Kingdom (2011) Pp 209-227.
[63] J. Husa ibid.

and standards in legal theory and practice. Its proponents believe that logic and structure attributed to the legal growth comes out of its power and relationships in the society. Although, comparative and interdisciplinary approaches have demonstrated profitable but, whether the introduction of these approaches will leave merely residues of 'legal doctrines', to which pockets of social sciences can be added, or should legal doctrine be merged with the social sciences have been asked.[64]

However, doctrinal approach alone does not do all needed to better the understanding of the law and methods employed by a researcher, lawyer or jurist within domestic legal regime. Comparative approach is therefore required to convince readers, government, industrialists, environmentalists, mineral explorers, lawyers, legislators and jurists in Nigeria and beyond about general acceptability of the law. This is especially when research involves mixed or contentious social legal issues. Also, it means that the writer has used methods that have been seriously analysed and reflected upon outside the discipline of law and not within a sole jurisdictional context. And that this reflection by the Nigerians, if only they knew it, gives some concerns. It makes their judicial pronouncements, legislations and works on legal method applied within the authority paradigm look worn and naive.[65] Too, if domestic methods as governed by the authority paradigm as a Nigeria case study are to be the tools of comparative law,[66] it will result in nothing more than superficial science or social reductionism. This is because of adoption of military decrees without a shift to global trend. Oil and non-oil minerals involve local, international and multicultural diversities that comparative analysis will help especially with its environmental impacts. The comparison is on the law, norms and practices.

This brief diversity is in some ways formally evident within the discipline of law. This becomes apparent in the different schools of jurisprudence. Positivism might remain a dominant model,[67] while natural law theory, realism, critical legal studies and feminist jurisprudence bear witness to other approaches of model research. Note that the dominant

[64] See B. D. Laing, Promises and Pitfalls of Interdisciplinary Legal Research: The Case of Evolutionary Analysis. In: Law M. V. Hoecke, ibid Pp 241-244.

[65] Ibid p. 207.

[66] Example is found in *AG Federation v AG Abia State & 35 Ors* (2002) where Supreme Court of Nigeria relied solely on foreign decision to decide domestic predominantly without recourse to Nigeria tradition. It needs not be like this in Nigeria judiciary.

[67] M. V. Hoecke, (ed). ibid p 206. See L. Alexander and E. Sherwin, Demystifying Legal Reasoning (Cambridge, Cambridge University Press, (2008).

legal theorists still totally wedded to the idea that the ontological and epistemological[68] foundation of law is the rule or the norm and that the work of the legal theorists is to provide a theoretical underpinning to what counts as the legitimate sources of these rules or norms.[69] For doctrinal academic researcher's work, it is 'to reveal an intelligible order or meaning in the law' so as to reduce the 'large and possibly confusing mass of legal information. It will be relatively tight and coherent theory which is thought to lie behind it or justifies it'.[70]

When lawyers and legal researchers faced with threats, they tend to look inward, thereby returning to the traditional of common law ideas both as to theories of liability and as to legal methodology. This repulses modern measures or developments, whether legal, social or political.[71] Again, taking refuge within the authority paradigm restricts the vision of lawyers or legal researcher to appreciate any sophisticated way on their own methods and the epistemological implications that are attached to their works. It also restricts their mental picture to develop new research skills which in turn leads to a discipline that becomes moribund when compared with disciplines outside law. In other words, the authority paradigm in Nigeria legal regime under the research course is alive and glowing. Yet, it is still imposing itself on the application, adjudication of law and legal scholarship in the common law tradition in Nigeria. It suffices that doctrinalists fear the security of their discipline[72] when standing alone.

Notwithstanding, doctrinal research in the Anglo-Saxon world like Nigeria is important due to its root to English common law. Comparative research in this area is interesting if focused on legal doctrines, as the whole conceptual legal frameworks follow the older history and order of the common law. This applies to USA and Canadian legal systems and other Anglo-Saxon (English Speaking nations).[73] Therefore, the researcher's critical legal investigation constitutes the heart of the research. The questions identified were tackled mostly in legal laboratory tests through litmus of doctrinal methodology since the work looks at national, international legislations and practices. This allows for conceptual

[68] Ontology and epistemology are both important elements of the philosophy of knowledge. If they often overlap, they have clear distinction : epistemology is about the way we know things when ontology is about what things are

[69] R. Susskind, *Expert Systems in Law* (Oxford, Oxford University Press, (1987) 78–79.

[70] Ibid at p. 207

[71] Ibid p. 208

[72] A. Beever, and C. Rickett, "Interpretive Legal Theory and the Academic Lawyer" 68 *Modern Law Review Volume 68, Issue 2* (2005) Pp 320–337.

[73] See generally Glenn.

framwork[74] as analytical tool to examine several variations and distinctions in the subject of research.

Other factors of comparison' may be relative and distinguished in various ways. Law could be compared in different perspectives. How the law was made and practised influences the possible outcome, or at least most evident in its enforcement. Examples are seen in international laws, European Union laws, state military decrees or US federal democratic constitution. Finally, the most classical one is the distinction between macro and micro levels. Comparing legal systems as distinguished from comparing more concrete rules and legal solutions to societal problems in different legal doctrines help to stabilise legal system. A peculiar case is the comparison of EU law with UK national laws. As the structure of both types of legal system, and also their underlying objectives, are different, this will influence the methods for comparison. Such as State judicial decisions in USA as against the federal decisions in Nigeria where her judges adopted USA decision.[75]

Though research dwells in doctrinal method, however, needs to compare and contrast makes research all-encompassing. In UK, there is one popular website called "go compare". It is a a very coherent site to compare and contrast things to enable customers make best choice with open market value. This applies to legal families. Comparing legal doctrines give good choice for domestic legislators and judges to make better decisions. When one tries to improve on one's own traditional legal system, be it a legislator, judge or scholar, it has become obviously vital to look at the other side of the borders as exemplified by this research. However, importation of foriegn rules whole and sinker may not work at all time because of different traditional legal contexts. One may want to inquire to what extent a legal evolution in one's country finds itself parallel in the developments of another country as we noted in *Abia State* case.

This is where Nigeria court relied in USA decisions[76] in interpreting her s 162(1) CFRN 1999 without given a thought of the strength of her federal system with that of the USA trends. The court wanted to give a justifiability of the controversy of alleged invasions of interest in property and conflicting claims of federal government to authorise use of oil in

[74] A conceptual framework is an analytical tool with several variations and contexts. It is used to make conceptual distinctions and organize ideas. Strong conceptual frameworks capture something real and do this in a way that is easy to remember and apply.

[75] *AG Federation v AG Abia State & 35 Ors.* See generally Mark Van Hoecke in his Methodology of Comparative Legal Research http://rem.tijdschriften.budh.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001.pdf accessed 28/5/2017.

[76] It principally relied on California, *United States v. State of West Virginia,* 295, U.S. 463 55SC 789, 79 L.Ed. 1546; *United States v. State of California,* 332 US 19, 24-25;US Reporter 1658, 1661

Nigeria's seabed vis-a-vis the agitations of the littoral states for its control. Hence, more thorough contextual approach may be required such as doctrinal methodology as identified by this work through appropriate teaching and learning based on a constructivist theory. Learning of the law takes place when teachers of law are able to present information in a way that students are able to construct meaning based on their own experiences. When this is lacked, the constructivist, in this context, the Nigeria judiciary or land occupiers will misinterpret the metaphor of law as presented by the legislature. This will invariably affect the executive in executing or implementing the law resulting to contest as witnessed in Nigeria. Thus, there are needs to harmonize legal traditions, cultures and practices. Globalizing legal order can only materialize in Nigeria setting if doctrine of ownership of land and mineral resources control is liberalised.

The doctrinal analysis will identify the importance of law between the federal, multi-national oil explorers and host states or local communities. It will examine their participation in the management and control of land, minerals and contributions to the environment sustainability under the law as it affects Nigeria in general. Environmental law is a contemporary issue that interacts with mineral and land laws. It is an all-encompassing subject with good number of disciplines. It includes courses like land law, agriculture, economics, sociology, social sciences, oil and non-oil law, law of the sea, international law, space law among others. This is to investigate and assess their choice of policies, laws and ideas of adjudication. This work probes into socio-legal approach to explore the perspectives that influences ways of thinking and policy-making. These are reflected in judicial and legislative processes in maintaining a sustainable development and conservation of the environment. The approach is to survey how property rights and social contract obligations could be protected by law and how social relationships influence the output of conducts in exploring minerals in Nigeria.

The writer considers concept of legal pluralism, theory of law and legal reasoning that arose in the early decades of the twentieth century broadly characterized by the claim that law can be best understood by focusing on what judges actually do in deciding cases, rather than on what they say they are doing.[77] Such example is found in South Africa where common law and roman indigenous land rights et cetera has been fused.[78] Note,

[77] See Brian Leiter, *American Legal Realism*, *in* The Blackwell Guide to Philosophy of Law and Legal Theory (W. Edmundson & M. Golding, eds., 2003); Michael Steven Green, *Legal Realism as Theory of Law*, 46 William & Mary Law Review 1915 (2005).

[78] See Thomas, PhJ; van der Merwe, CG; Stoop, BC. *Historical Foundations of South African Private Law. Durban, South Africa: Lexisnexis Butterworths.* (2000) p. 7

legal pluralism is a concept developed by legal sociologists and social anthropologists "to describe multiple layers of law, usually with different sources of legitimacy that exist within a single state or society". This is prudent to critically examine land, mineral and environmental legal doctrines in Nigeria.

Comparative law relates with common denominators and harmonisation and what comparatists in other disciplines call the problem of universal myths.[79] An interdisciplinary approach might well disclose that law as a discipline has some interesting contributions to make to social scientific epistemology in general. Equally, such approach can reveal the shortcomings of legal reasoning or assertion. In particular, the tendency of Nigerian judges to make assertions about social policy is supported by empirical research as witnessed in *AG Federation v AG Abia State & 35 Ors supra.* The above has made the research to take steps further in applying these approaches through the Africa models and concepts. Common law was alien to Africa before colonisation, thus mineral and land rights were held together under different customary laws in Nigeria.

Conclusively, critical doctrinal review comes to:-

i. examine how much the community or individual land and mineral rights are protected under the national laws;
ii. appraise the conflicts resulting from protection or otherwise of rights to property under national and transnational laws noting if human rights involve right to own property and enjoy good environment under ss 20 and 43 CFRN 1999;
iii. review the legal protection of property and environmental rights in Nigeria. There will be an exterior comparison of property rights across various jurisdictions.[80] The legal analysis relies on both primary and secondary sources.[81] As the research questions cut across different bodies of law, domestic and international laws on rights to land, minerals and environment with their sustainability. It has diverse interests and investments seeking legal protections, the spectrum of primary sources used is exhaustive in the study;

[79] ibid see D. H. Genn, M. Partington, & S. Wheeler above.

[80] On comparative law methods, see Zweigert K., and Kötz, H., *An Introduction to Comparative Law*, 3d ed. transl. by Tony Weir. (Oxford: Oxford University Press, 1998):32-47; Anthony J. Onwuegbuzie, and Kathleen M. T. Collins. "A typology of mixed methods sampling designs in social science research." *The qualitative report* 12.2 (2007): 281-316 and Reitz. J. C. "How to do comparative law." (The American journal of Comparative law 46.4, 1998).

[81] Legal frameworks includes statutes and judicial decisions and academic literature as the case may be.

iv. understand world co-existence and how it is being coordinated by laws and study how environmental and proprietary rights breach or social negative act of a nation affects the others. This is to appreciate the similarities and differences between jurisdictions and update national laws of interest where necessary;
v. give Nigeria mineral and environmental sectors international regulatory background and good knowledge of best practices in the modern world.

Finally, the doctrinal theories and case laws of different jurisdictions are included insofar they relate to aspects of domestic and customary international law of universal application. Also, to the interpretation of treaty's standards that are formulated in a similar way featuring land ownership, mineral rights and environmental sustainability. This is not limited to domesticated international conventions but International Court of Justice decisions and other multinational laws. The doctrinal analysis of law mainly draws on national constitutions, relevant legislations and, to a much lesser extent, case laws. Secondary sources are undertaken through conferences and overseas research trips to access libraries and sites within and outside UK. It helped the writer to identify and access relevant laws as well the challenges they are facing.[82] This study analyses relevant provisions of the contracts relating to the Nigeria land and mineral development with international environmental best practices.[83]

It appears that victims of compulsory land acquisitions and Nigeria courts are yet to utilize the window of opportunity to access fundamental human rights for good environmental atmosphere. As bottleneck of s 6 (6)(c) CFRN makes this non-justiceable. Doctrinal comparison has proved interesting and very instructive. An Indian Supreme Court in *State of Madras v Champakan Drairajin supra* has made bold of this opportunity. Article 37 of the Indian Constitution similar with the provisions of s 6(6)(c) CFRN was amended.

Oxford Standard for Citations of Legal Authorities (OSCOLA)[84] reference style is used for this research. It is a standard and suitable reference used in legal research. However, a

[82] As project contracts typically contain provisions on property rights, the legal analysis would be incomplete if it did not cover contractual arrangements.
[83]The analysis of petroleum contractual arrangements benefited me from my constant participation in the courses and conferences of Association of International Petroleum Negotiators (AIPN) and Energy Institute both in the UK and US.
[84] *Oxford Standard for Citations of Legal Authorities (OSCOLA)* 4th ed Faculty of Law, (Oxford University (2012) https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf accessed 28/11/2013.

'minimal bibliography'[85] is adopted in our reference. Materials used are cited in the footnotes and later arranged alphabetically at the end of the work. In some cases, laws and policies do not always react identical. It could be reasoned that law alone is not absolute panacea for all issues considering some social-political and socio-economic contentions in the society. The research considers Nigeria laws while looking on transnational jurisdictions on the subject.

1.3 SUMMARY OF CHAPTERS

In this research, the work is chaptered into seven. Chapter One, is the introduction which brings out the importance of the research and its hypotheses, giving out statement of problem, chapter work, gaps, aims and objectives, research questions, significance of the study and contribution to knowledge and the research methodology adopted by the researcher.

Chapter Two contains literature reviews and concepts of land, mineral and environmental administration in Nigeria. This chapter embarked on a critical review of previous literatures and laws on the subject of study.

Chapter Three deals with land law, property rights or interests in Nigeria. The chapter carried out critical study of land law and property rights in Nigeria and its implications of split of ownership of mineral resources from land. It examined various property rights: alienation of interests in land, the discrepancies between Land Use Act and Nigeria Constitution and causes of land acquisitions and nature of compensation for compulsory acquisition.

Chapter Four looks on subjective well-being of conflicts of ownership and control of petroleum resources in Nigeria. This investigative chapter examines core causes of conflicts in the mineral and landownership under Nigeria laws. It provides uniformed systematic legal frameworks against split and sole ownership or control of mineral oils under a federal system. It gives detailed analysis of problems surrounding mineral ownership, exploration, control, revenue allocation and the enabling laws thus, proposing unification of mineral resources rights with land.

[85] This comprises the comprehensive materials used in the work but not included expanded consulted/read materials herein. See N. Asika, *Research Methodology in the Behavioural Sciences.* Longman Nigerian Plc. (1991) p 166.

Chapter Five is on laws of non-oil mineral resources and its enforcement in Nigeria. It looks on Nigeria law of solid minerals and its viability. It reviews dormancy and theoretical approach to non-oil minerals and mining activities in some states of Nigeria especially in Ebonyi. It examines how solid mineral resources law that gives federation sole ownership affects its exploration and state economic autonomy.

Chapter Six analyses and discusses various developed and developing jurisdictional laws of ownership, exploration and control of land, mineral resources and environmental management in particular the US, UK and Canada experiences among others. It makes in-depth doctrinal comparative analysis of their models with Nigeria.

Chapter seven presents the research findings, answers to research questions, conclusions, recommendations, suggestions, opinions and position of the researcher. This will be followed by Appendices, Bibliography and References of the work.

CHAPTER TWO

LITERATURE REVIEW

2.1 INTRODUCTION

Prior to the British colonial administration and subsequent amalgamation of Nigeria in 1914, land and minerals were held and owned by landowners or occupiers under various customary laws. But the Mining Ordinances of 1906, 1907 and subsequent 1914 and 1916 moved the entire ownership of all land and minerals underneath the earth to the British Crown while occupiers retained the surface rights. However, the colonial government was cognizant of the needs to satisfy the indigenous people in terms of adequate compensation for any damage done to crops or economic trees during mineral mining and oil explorations. Miners were given licenses to enter to explore minerals in leased land. By implications, landowners do not have right to challenge the operations of occupier of the leased land while the agreement subsisted.[86]

The colonial government began the execution of rights over land, principally as set out in the Land and Native Rights Proclamation of 1910: "...that the whole land should be under the control of the Nigerian government while the colonial government may grant certificates of occupancy to both Nigerians and non-Nigerians" Evidence has shown that the Proclamation was repealed and re-enacted in 1916 Ordinance to ensure total compliance. In 1914, during Fredrick Lugard administration, matters changed. The Governor-General of Nigeria, passed a legislation to secure easy administration of mining and oil rights, replacing the 1907 Mineral Ordinance and 'making it a wholly British concern'.[87] The mining company had the solitary right to explore and extract any resources found therein. Since the colonial invasion and subsequent decolonisation, Nigeria has followed these rules and afterwards made the law which took the entire land from the customary occupiers.[88] The indigenous landowners have appeared unsatisfied with the sudden taking over of their land and minerals against their customary practices. This been the fact that the colonial regulations were transferred into the new rules after Nigeria independence and thus, subsist.

[86] See generally ss 3, 22 and 34 of Mineral Ordinance 1916.
[87] See s 6 (1) of the 1914 Ordinance. See also AOY Raji and TS Abejide . 'The British Mining & Oil Regulations in Colonial Nigeria 1914-1960s: An Assessment', Singaporean Journal of Business Economics, And Management Studies Vol.2, NO.10, (2014) Pp 65, 66, 67 and 71. The invasion was between 1885 and 1914.
[88] S 1 of Land Use Act 1978.

Since these regulations, there have been contests, controversies, litigations, quests and questions on the subject-matter. This chapter was conceptualised to examine various literatures and laws to understand the raging legal issues surrounding mineral resources control, environmental rights and landownership in Nigeria. It will study the legal implications of compulsory land acquisition and compensations particularly for purposes of oil and non-oil mineral extraction in Nigeria. It will consider the inferences of retaking of land and minerals from the customary indigenous owners in Nigeria.

The crux of the question had been on how best to deal with the conflicts of laws of mineral and landownership in Nigeria. Previous studies have failed to provide answers to these questions, hence the choice of this research to unravel the confusions in Nigeria land and mineral ownership contests. It will study the legal implications in the contest of who owns what in land and its relationship with mineral resources filling any gaps. We intend to know how government resources control have affected law-making,[89] judicial approaches[90] and enforcement on land rights,[91] ownerships,[92] mineral exploration,[93] oil revenue allocation,[94] environmental right[95] and compensations[96] for land compulsorily acquired for mineral exploration as provided by the law.[97] The study will take on an investigative research on these laws and make an in-depth review on how they impact on the subject of research.

The chapter will examine definitions of the subject by previous literatures, statutes and judicial decisions that discussed the legal regime of land and mineral ownership control in Nigeria. The researcher will survey how academics have treated the relationship between the Nigeria legal regime on ownership of land, mineral resources and environmental management. It will examine the fight for compensation for breach of such rights under Nigeria and international laws. It will find the level of implementation or enforcements of these laws in practice. It will finally make a note on approach of government to oil and non-oil minerals and contest for participation by the oil producing states and local

[89] Land Use Act, CFRN, Petroleum Act and EIA are instrumental.
[90] *Attorney General of Federation v Attorney General Abia State & 35 Ors* (2002) 6 NWLR (PART 763) 264.
[91] See ss 9, 29, 34 and 36 LUA and s 43, 44(1) CFRN.
[92] See 1, 28 LUA and s 44(3) CFRN.
[93] *Attorney General of Federation v Attorney General Abia State & 35 Ors* ibid.
[94] See s 162 CFRN and decision in *AG Federation v AG Lagos State & 35 Ors* (2005) supra.
[95] S 2 EIA, s 20 and s 6(6)(c) CFRN
[96] S 29 LUA, s 44(1) CFRN and see generally Oil Pipeline Act.
[97] S 28 and s 1 and s 29 of the Act. CFRN s 20 and s 44(1 and 3). Again, see EIA s 2. These will feature prominently in the research as it progresses.

communities in the administration of petroleum resources or unification of ownership of land and mineral resources in Nigeria.

2.2 DEFINITIONS OF TERMS

a. Land

According to Elizabeth Cooke:

> "We belong to the earth. We are made of it; we are tied to it by gravity; indirectly, we eat it. Without it, there is no human race. At the end, we return to it; Dust to dust, ashes to ashes".[98]

Views differ on the meaning of land from divergent legal jurisprudence, literatures and authors. Our concern predominantly is on the model of landownership, mineral resource control and its environmental implications and legal frameworks that affect this ownership contest in Nigeria. Considering divergent global legal systems, the concept of definitions of land varies but they intend to repeat and expand upon one another in less than helpful way. The researcher focuses upon the English common law principle which is the background of Nigerian legal bedrock.

The English Law of Property Act[99] (LPA) s 205 (1) (ix) defines land as follows:

> Land includes land of any tenure, and mines and minerals, whether or not held as part from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; . . . and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same . . .; and "manor" includes a lordship, and reputed manor or lordship; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir.

The Nigerian Land Use Act[100] failed to define the term land in its totality. It defined "developed land" as "*land* where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or

[98] Elizabeth Cooke, *Land Law*, Clarendon *Law* Series Oxford University Press (2012) p 1.
[99] The English Law of Property Act 1925 also referred here as LPA.
[100] LUA s 51

residential purposes".[101] The Act describes, "improvements" or "unexhausted improvements" as "anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long lived crops or trees, fencing, wells, roads and irrigation or reclamations works, but does not include the result of ordinary cultivation other than growing produce…"[102] There is no single or statutory definition of the proper meaning of land or 'mineral resources'[103] in Nigeria, ownership of land and control of mineral resources were approached in a broad but confusing way.[104]

Land offers its inhabitants self-esteem, livelihood and reliance. They depend on it for daily survival. Its ownership varies from customary to statutory rules within nations or sovereigns to international laws. Land could include island, developed and undeveloped, rural-agrarian and urban-developed; sovereign and international land. Rights over land determine other ownerships including mineral resources, water and space. The Nigeria court held in *Joseph Abraham & Anor v Ishau Amusa Olorunfunmi & Ors*[105] that ownership connotes "the totality of the bundle of rights of the owner over and above every other person on a thing he owns. It connotes a complete and total right over a property". Ownership rights consist of various claims, liberties, powers and immunities as regards the thing owned.[106] It is power of possession, alienation, bequeathing, charging as security and granting to another person any or all of the rights for a stipulated time[107] or forever. The court supported this[108] in *NNPC v Sele*[109] that the owner of land adjoining, abutting or

[101] LUA s 51 (1).

[102] See generally s 51 of the Act. This means that what is developed on the land and land itself have the same meaning. See also Smith ibid.

[103] Sandra Clarke and Sarah Greer, *Land Law Directions* Oxford University Press, (2010).

[104] See s 1 and s 51 (1) of the Act. The constitution in s 44 (3) failed to incorporate its meaning too.

[105] *Joseph Abraham & Anor v Ishau Amusa Olorunfunmi & Ors* [1999] 1 NWLR (Pt. 165) 53. One can only own what is found within the boundaries of his land or sovereignty.

[106] These include the power to enjoy, manage and determine the use to which the thing is to be put to, produce or even to destroy it, as the owner of it pleases. See Francisca Ekwutosi Nlerum*, Reflections on Participation Regimes in Nigeria's Oil Sector*, Nigerian Current Law Review (2007 – 2010), pp145 – 162. See Resta, Giorgio. "Systems of Public Ownership." *Comparative Property Law: A Research Handbook, Edward Elgar, (2016), Forthcoming* (2015). Laforce, Myriam, Ugo Lapointe, and Véronique Lebuis. "Mining Sector Regulation in Quebec and Canada: Is a Redefinition of Asymmetrical Relations Possible?" *Studies in Political economy* 84 (2009).

[107] R. W. M. Dias, *Jurisprudence* (London, Butterworth 5th ed), (1985) p. 292.

[108] *Joseph Abraham & Anor supra*

[109] *NNPC v Sele* [2004] 5 NWLR (Pt. 866) 379, the court held that the owner of land adjoining, abutting or encompassing waterways are entitled not only to fish there but also to settle or erect structures and even extract rent from others seeking to use the land.

encompassing waterways are entitled not only to fish but, to settle or erect structures, and even extract rent from those seeking to use the land.

Kevin Cahill noted that the way the limited land resources in rural and urban are managed is pertinent. The author noted that people kill each other to possess land and 'other mineral resources found therein'. These are been witnessed globally and particularly in Israel, Palestine, Kosovo[110] and in Nigeria as it concerns oil and gas exploration. The management scope for land is wide with planning, mineral extractions and environmental control forming important segment of it. It has showed that states have costly technical systems to manage social relationship over land, including maintaining register title, environmental conservation, compulsory purchase and valuation, dispute resolution and legislative review mechanisms.[111] Nlerum[112] concluded that the principal factor is the political system in place at the time of determination and the instrumentality of law.[113] In the USA, ownership of land or mineral resources is not vested solely on the central government or state. The system has been liberalised in Canada but in Britain, petroleum is solely vested on the Crown.[114]

There are two broad theories of landownership. These comprised 'domanial system and qualified ownerships'.[115] Domanial type provides for the vesting of ownership rights in the sovereign which is prevalent among regions, countries like California and Indiana in America.[116] In the US, oil and gas rights or landownership to a certain parcel may be owned by private individuals, corporations, Indian tribes, or by local, state or federal governments and not centrally controlled. Oil and gas rights extend vertically to downward

[110] Kevin Cahill. "Who Owns the World: The Hidden Facts behind Landownership". Edinburgh: Mainstream, (2006). See also Perry, Peter. Who owns the world: The hidden facts behind landownership? *New Zealand Geographer*, *63*(3), (2007) pp 231-232.

[111] Ibid

[112] Nlerum ibid pp 145 – 162. See Tungaraza, Joseph Mtebe. Legal reform of oil and gas law in Tanzania in relation to foreign direct investment. Diss. University of the Western Cape, (2015).

[113] Francisca Ekwutosi Nlerum, ibid. See E. Egede, "Who owns the Nigerian Offshore Seabed: Federal or States?: An Examination of the *AG Federation v AG Abia State & 35 Ors*". The Journal of African Law, Vol. 4 (1) (2005).

[114] Ownership of oil and gas within the land area of Great Britain was vested in the Crown by the Petroleum (Production) Act 1934 as amended. Other minerals are in private ownership, and although there is no national licensing system for exploration and extraction, however, planning permission must be sought and obtained from a mineral planning authority for its extraction to take place. https://www.bgs.ac.uk/mineralsuk/planning/legislation/mineralOwnership.html Accessed on 02/04/2014.

[115] This is where the *ownership* of natural resources is treated in contradistinction to the *land* estate and *ownership.* Each *landowner* has an equal right with his co-*landowner* to secure his right. Concept of the mining or mineral resources domain of the state is epitomized by the *domanial system*

[116] See Nlerum F. E. ibid at p 150. See Ownership and Conservation of Oil and Gas, in Oil and Gas Law, Cases and Materials, 2d, West Publishing Co. St. Paul, Minnesota, (1993) pp 17 – 18.

from the property, and unless unambiguously separated by a deed, petroleum rights are owned by the surface landowner.[117] Land title is seen as key measure to create stable pattern of land or mineral holding.[118] The UN has become involved in securing land tenure through Habitat's Campaign for Secure Tenure and Global Land Tools Network.[119]

The Louisiana Act 315 of 1940, which, was applied retroactively, provides that mineral rights reserved in land conveyances to the United States shall be 'imprescriptibly,'[120] thus, extending indefinitely to the former owners' mineral reservations. This has taken judicial noticed and upheld in *United States, Petitioner v Little Lake Misere Land Company, Inc*., et al.[121] The state' "access to land model and security of tenure are strategic prerequisite for the provision of adequate shelter for all and the development Goals to reduce world poverty. A new approach has been launched by World Urban Forum 2006 to promote solution to livelihood and food insecurity which it clearly stated has been "homeless, poor and hungry".[122] Legal measures of land nationalisation and acquisition for mineral extractions can create homelessness for the occupier owners or inhabitants.

b. Mineral

The United States' Supreme Court in *Watt v Western Nuclear, Inc*[123] has noted that 'the term "mineral" is inherently ambiguous'. The term is expansive and adequate to embrace nearly all material substances under and above the earth, and could represent the entire estate in land.

> Considerable confusion and volumes of litigation have arisen from statutes and grants purporting to affect "mineral" rights. Most of the contention deals with either of two issues: whether a particular substance is a mineral within the scope of the conveyance or law, or whether lands are "mineral lands" for the purposes of land classifications. The following sampling of the numerous judicial and regulatory constructions of the term "mineral" illustrates the futility of attempting to divine a generally accepted definition: The term "minerals," here used. **…**includes all fossil bodies or matters

[117] See generally Nlerum ibid pp 145 – 162, Resta, Giorgio ibid and Tungaraza, Joseph Mtebe ibid.

[118] Ibid.

[119] *Global Land Tools Network* (htt://www.gltn.net) and Campaign for Secure Tenure (htt://www.unhabita.org/. See Goal 7 as cited by Robert Home at p 7.

[120] A legal right that is not subject to being taken away by prescription, lapse of time or other related measures thereof. It is an inalienable and imprescriptibly people's right over a thing.

[121] *United States, Petitioner v Little Lake Misere Land Company, Inc*., et al No. 71—1459 decided: June 18, 1973 accessed 3/04/2014 via
http://www.law.cornell.edu/supremecourt/text/412/580

[122] See Robert Home ibid Pp 7 – 9.

[123] 462 U.S. 36 (1983).

> dug out of mines..." all metals are minerals, but all minerals are not metals.... Beds of stone **...** are therefore properly minerals…[124]

Sylvia Harrison noted further that "certainly in popular estimation, petroleum is not regarded as a mineral substance any more than is animal or vegetable oil… The authorities now very generally… hold petroleum to be a mineral, and as much a part of the realty as… iron, and coal. The word 'mineral'... shall not be held to include iron and coal. [125] In defining land, the LPA notes that "…mines and minerals" include any strata or seam of minerals or substances in or under any land. [126] Perhaps the closest estimation to a unifying rule is that with respect to private grants. Therefore courts may attempt to 'construe the intent of the parties, and with respect to statutes, the intent of the legislature.' Attempts have been made by previous literatures, statutes and regulations to define minerals, yet unforeseen ambiguities exist. It could suffice that land could be mineral but mineral may not be land. Both need to be analysed along. Under the above system, once severed right is from surface ownership, oil and gas rights may be bought, sold, or transferred, like other real estate property. Oil and gas rights offshore are owned by either the state or federal government. An owner of real estate also owns the minerals underneath the surface, 'unless the minerals are severed under a preceding deed or agreement'.[127]

There are oil and non-oil minerals. Oil mineral includes crude-hydrocarbons; non-oil comprises of limestone, gold, diamond etc. In Nigeria, there is no law that legally defined mineral oils. However, this can descriptively said to mean a flammable liquid that consists of hydrocarbons with other organic compounds found underneath the land or earth through oil drilling while natural gas consists mostly of methane and hydrocarbons or ethane. Crude oil is a mixture of hydrocarbons that exists in natural state underground reservoirs. It remains liquid substance when brought to the surface earth. Crude oil and natural gas are fossil fuels used for heating and other purposes, formed from the remains of dead plants and animals. They have similar uses but may differ in the effect and outcome of their use.[128] Solid mineral resources are natural occurring inorganic solid, with a definite

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[124] It is plain that granite did not pass. The word "ore" has a definite signification, and it designates a compound of metal and other substance. Granite neither in a popular or scientific sense is a mineral ore. See Sylvia L. Harrison. 'Disposition of the Mineral Estate on United States Public Lands: A Historical Perspective', 10 Pub. Land L. Rev. 131 (1989) Pp

[125] Sylvia Harrison ibid p 133. See also *Williamson v Jones,* 39 W. Va. 231, 256, 19 S.E. 436 (1894).

[126] LPA s 205 (1) (ix) supra.

[127] Nlerum ibid Pp 150 – 162.

[128] Petroleum is a broad category that includes both crude oil and petroleum products. The terms *oil* and *petroleum* are sometimes used interchangeably. See generally in

chemical composition, and an ordered atomic arrangement. These are neither made by humans nor from plants or animals. Solid mineral are not liquids like oil or water, gases like the air and they grow as crystals.[129]

The question of ownership of crude oil and natural gas resources has been addressed in international instruments. In 1952, the United Nations General Assembly resolution 1952[130] provides the right to private persons to freely use and exploit their natural wealth and resources.[131] In Nigeria, ownership of petroleum resources and all natural resources are solely vested in the Federal government[132] and controlled centrally. Its right to give and withdraw licence was affirmed in *South Atlantic Petroleum Ltd v Minister of Petroleum Resources* supra. Interested persons can 'only' be granted licenses or leases for exploration purposes nothing more. The exclusive right is enjoyed by Government in Nigeria but with controversies.[133] Other issue is the revenue formula under constitution s.162. Of concern is the present legal regime and its 'attendant environmental degradation[134]'in the region of exploration[135] This anxiety has given disputes where the Supreme Court was called to determine its jurisdiction as well as the seaward boundary of a littoral state regarding petroleum on seabed. This was for the purposes of ownership, control and calculating the revenue accruable to such states from the resources under Constitution[136] s.162[137] as held in *AG Federation v AG Abia State & 35 Ors.* This will have the researcher's much attention in this work.

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http://www.differencebetween.net/science/nature/difference-between-crude-oil-and-natural-gas/ accessed 12/3/2016.

[129] Ibid. Each one is made of a particular mix of chemical elements and the chemical elements that make up each mineral are arranged in a particular way.

[130] Resolution No. 626 (VII) of December 1952.

[131] This extended in 1962 to the trend that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of their national development and of the well-being of the people of the state concerned. See UN Res. 1803 (XVII) *titled Permanent Sovereignty over Natural Resources.* 1966 Res No. 2158(XXI) and 1974 Res. No. 3281(XXIX) entitled *Charter of Economic Rights and Duties of States.* Keith W. Blinn *et al*: *International Petroleum Exploration and Exploitation Agreements: Legal, Economic and Policy Aspects,* Euromoney Publication, (1986) chapter 1 cited in Nlerum (2007 - 2010) ibid pp 150 – 152.

[132] See CFRN s 44(3) and, Petroleum Act s 1.

[133] There have been series of contest and protest over the ownership by the Federal Government. The contenders and protesters have argued that they should be given control as owners of the land where these resources are located while they pay a determinable percentage to the Federal Government.

[134] Highlighted supplied by researcher to express the degree of attention this requires.

[135] See Nlerum ibid at pp 151 and 152.

[136] The Onshore/ Offshore Dichotomy have been abolished the position of Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004. See *Attorney-General of the Federation v Attorney-General of Abia State & 35 Ors* [2001] 7 SCNJ 1; *Attorney –General of the Federation v Attorney-General of Abia State & Ors* [2002] 4 SCNJ 1. However, unrest and restiveness have not been put to rest by this law and judicial decisions.

[137] It will also accrue tax payment and revenue to government.

d. Environment

The environment contains the air, water, and land on earth which can be harmed by mans' by-products, oil activities or other industrial activities. According to Longman Dictionary of Contemporary English,[138] environment means "the natural features of a place, such as, space, water, weather, the type of land it has, and the type of plants that grow in it and general surrounding ornaments found within the vicinity". Environment means, "the space with all living organisms and natural resources, i.e. natural and man-made values, their interaction and the entire space in which people live and in which settlements, goods in general use, industrial and other facilities, including the media and areas of the environment, are situated". It is "where we all live" or "everything that's not me".[139]

To Omaka,[140] it is the place of human, plant and animal existence. That it is where we live and develop with instances of the components of the environment which comprised the air, land, water, vegetation, the surroundings and the entire ecosystem. In our natural habitat, a lot of creatures and crops of diverse flavors surround us and this therefore will include where natural mineral resources including oil and gas are housed. They are therefore sit on the land or deposited under the land. This forms what is called 'environment' in its natural state.[141] It will be seriously affected by all activities on the land where it is seated if not well managed through best practices. From the five decades of oil exploration in Niger Delta Nigeria, one can conclude that there will be no more habitable and sustainable environment.[142]

By Nigeria constitution[143] and allied sources,[144] environment means the water, air and land, forest and wildlife, all layers of the atmosphere, all organic matters and living organisms, and the interacting natural systems[145] under and above the earth. Black's Law Dictionary[146]

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[138] Fourth ed, (Harlow: Pearson Education Limited,), (2005), p. 523.

[139] Robert Home No. 4 (2007) ibid p 5 citing 'World Commission of Environment and Development and Albert Einstein' respectively.

[140] Chukwu Amari Omaka. *The Nigerian Conservation Law* (Lagos: Lions Unique Concepts), (2004), pp. 1-2.

[141] Omaka Ibid p 1.

[142] A. Uchegbu, "The Legal Regulations of Environmental Protection and Enforcement in Nigeria", The Journal of Private and Property Law, vols. 8 and 9, (1987 & 1988) pp. 57-74. Note that no environment can exist without land.

[143] S 20 ibid,

[144] Environmental Impact Assessment Act, 1992 Cap E12 LFN, 2004 s 61(1).

[145] See J. G. Rau and D. C. Wooten, (eds.), (1980), *Environmental Impact Analysis Hand Book* (MC. Graw-Hill Publishers), (1980) pp 5-8 cited by Omaka (2004) op cit p. 5.

[146] Black's Law Dictionary cited by T. R. Okonkwo, *The Law of Environmental Liability* (Second Edition, Lagos: Afrique Environmental Development and Education,) (2010) pp 17-18.

defines environment as, "the totality of physical, economic, cultural, aesthetic, and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of people's lives; the surrounding conditions, influences or forces which influence or modify". The Nigeria Environmental Impact Assessment Act[147] defines environment as: "components of the earth and it includes; "land, water and air, including all layers of the atmosphere and all organic and inorganic matter and living organism…" Rodgers divided the environment into the 'natural environment and human environment'. Natural environment includes the physical condition of the land, air, and water while the human environment includes the health, social and other man-made conditions affecting a human being's place on earth.[148] Ball and Bell remarked that "the environment may be treated as covering the physical surroundings that are common to all of us; air, space, waters, land plants and wildlife".[149]

Ikoni[150] stated; "the environment is a state of affairs which is based upon the activities of man in his natural habitat and the relationships he has with his immediate environment in terms of water, air or animals'. If this is tampered with by human activities, the impacts will devastate the well-being of their co-existence. Environment is made up of the physical, chemical, biological and spiritual components, activities and the inter-relationship as such in the nine planets.[151] Oboabori,[152] states, that environment is the totality of the places and surroundings in which we live, work, and interact with other people in our cultural, religious, political and socio-economic activities for self-fulfillment and advancement of our communities, societies or nations. Nigeria constitution s.20 provides that: 'the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'. The research examines the extent of enforcement of this provision. Environmental law strives to provide, support measures and conditions against anything that will affect the environment including mineral activities.

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[147] Environmental Impact Assessment Act ibid.

[148] William H. Rodgers, (1977) ibid at p. 1

[149] S. Ball and S Bell, *Environmental Law: the Law and Policy Relating to the Protection of the Environment* (Third Edition, London: Blackstone Press Limited), (1995) p. 4.

[150] U. D. Ikoni, "The Right to Environment in International Law as a Conceptual Philosophy of States' Environmental Protection Policy: Some Open Lessons for Nigeria", Ebonyi State University Law Journal, vol. 3, no.1, (2009) pp. 41-52.

[151] Chinedu A. Igwe, "The United Nations Environment Programme (UNEP): An Institution and Programme for the Maintenance of Sustainable Environmental Development", Commercial & Industrial Law Journal, vol. 1, No. 2, pp. 52-63, (2012) p. 52.

[152] A. O., Obabori, Ekpu A. O. O., and B. P. Ojealaro B. P., "An Appraisal of the Concept of Sustainable Environment under Nigerian Law." (*Journal of Human Ecology* 28.2 (2009): 135-142 at p. 135. See Raphael O. Adeoye, "Environmental Rights and Sustainable Development in Nigeria: An Appraisal", Ebonyi State University Law Journal, vol. 3, no. 1, (2009) pp. 192-217, particularly at p. 193.

2.3 CONCEPTS OF LAND, MINERAL AND ENVIRONMENTAL RIGHTS IN NIGERIA

The management of the land and mineral estates for overriding interest over the years has been subject of conflicts between the land occupiers, historical thrust of disposal of land, natural resources and the current trend toward their preservation and conservation. Since exploiting the mineral estate is often perceived as precluding other uses of the affected lands,[153] the conflict of management is heightens daily. In Nigeria, the interest in land which produces oil minerals, determines the distribution of the revenue from oil. Simply put, any state with oil receives 13% of the total production out-put. This is called *13% derivative principle* under s.162 CFRN. It resurrected to the legal conflicts in *AG Federation v AG Abia State & 35 Ors.* States assert ownership of their land and in extension their interest in oil minerals produced by their land.

Generally, there is no global comprehensive legal framework for ownership and control of land, mineral resources and environment. Rights and ownership of land, control of mineral resources and environment cut across national and international boundaries both in land, air and seas. The borderline seemed to be the legal instruments of each sovereign nation that determine or define landownership and mineral rights.[154] It oversees the environment[155] sustainability. At the moment, the control of natural resources principally crude oil in Nigeria is within the ambit of the Federal Government and land is with state governors.[156] But, environmental law has remained contentious and incomprehensive.

Property rights and landownership could be traced to the beginning of the earth. The Holy Bible states that when God created Adam and Eve, he put them in the Garden of Eden (their land) and said to them: "Be fruitful, multiply, fill the earth, subdue it, and have dominion over the fish of the sea". He continued, "behold, I have given you every plant yielding seed that is on the face of the earth and every tree with seed in its fruit, 'you have

[153] Sylvia L. Harrison ibid Pp 132.

[154] In Nigeria, laws guiding these issue include; Constitution of Nigeria ibid; Exclusive Economic Zone Act Cap 116 LFN 1990; Land Tenure Law before 1978; Land Use Act ibid; Mineral Act of 1945; Petroleum Act 1969 Cap 226 LFN 2004; Petroleum Amendment Decree 1998; Petroleum Decree 1969 The Nigerian Minerals and Mining Act 2007; The Regulation (Oil) Ordinance 1907/1909. These laws without doubts are obsolete as most of them were carried over from her colonial master (the Great Britain). Exclusive Economic Zone Act Cap 116 LFN 1990; Mineral Act of 1945; Petroleum Amendment Decree 1998; Petroleum Decree 1969; the Regulation (Oil) Ordinance 1907/1909.

[155] There appear laws in some sovereign states while controversies, contests, litigations, disorderliness, corruption and poor legal outfits infiltrate into others. These attitudes had left ownership of land and its natural mineral contents very provocative and belligerent and in extension affects environment.

[156] CFRN s 44(3). See Petroleum Act ibid s 1 and LUA s 1.

them for food".[157] God gave 'everything' he created to them to own and have. Holy Bible notes in Jeremiah,[158] "Now, I have given all these lands into the hands of Nebuchadnezzar, the King of Babylon…" This supports provision of LUA s.1.[159] But, the intendment of this Act is doubted if tested with the Scriptures. The later scripture should be read in combination of the former[160] just as the provisions of s 1 need to be read plausibly with provisos of s 14, s 36(2) of LUA and ss.43, 44(1), of CFRN which guarantee private rights supporting the scripture.

Thus, prior to 21st century in England, Kevin Cahill viewed[161] land as key asset in properly structured market. This was said to be frozen in 'surviving feudal or medieval' structures of ownerships. The author stated that what evolved in this Kingdom was "grudge capitalism".[162] Land was not owned by over 95 per cent in 19th century until 20th century when re-distribution of land to 'owner-occupiers based principle' was implemented. The author held that world has become more prosperous with the protection of private property rights ownership. Though, concluded that 60% of the land is held by the superiors. The conceptual roots of exclusionary land regimes lie within British philosophical traditions of possessive individualism, utilitarianism and the enclosures movement. It allowed the enclosers and engrossers of land to exclude communal rights in the cause of extracting greater productivity from the land.[163]

Property right is distinctive from proprietary right as illustrated by Clarke and Kohler.[164] The authors established the essential attributes that distinguished proprietary interests from non-proprietary interests to range of their enforceability. They submitted that a non-proprietary interest "is essentially bilateral stating that only one person is under a correlative duty to the right held by the right holder. A proprietary interest, on the other

[157] See Holy Bible according to Genesis 1: 1 – 31, particularly 28 – 31. This displays divinity of inhabitants' rights and ownership over these creatures and nature gifts from time immemorial.

[158] The Holy Bible according to Jeremiah 27: 6. These include land, environment and minerals of any type.

[159] S.1 provides, "all land comprised in the territory of each State in the Federation is hereby vested in the Governor of that State, and such land shall be held in trust and administered for the use and common benefits of all Nigerians in accordance with the provisions of this Act."

[160] Niger Delta Development Commission (NDDC) 2006; Niger Delta Regional Development Master Plan – popular version. NDDC, Port Harcourt noted that; "widespread poverty; severe dearth of infrastructure and amenities in the rural areas; being the world's third largest wetland with fragile ecosystems; high unemployment, rural-urban migration, urban decay; and environmental degradation and pollution". This was not witnessed during Adam and Eve in Garden of Eden.

[161] See Kevin Cahill ibid.

[162] Kevin Cahill ibid

[163] Kevin Cahill.

[164] Alison Clarke and Paul Kohler, *Property Law Commentary and Materials*, Cambridge University Press, New York (2005) Pp – 156.

hand, is generally enforceable". They continued; "if I hold a property right, everyone in the world (or, in the case of some types of right, everyone in the world except a privileged class) has a correlative duty.[165] They emphasised English decision in *Hill v Tupper* supra where it was held that "a new species of incorporeal hereditament cannot be created at the will and pleasure of the owner of property".[166] The principle that a proprietary interest is generally enforceable is as near absolute as any principle in English property law. Clarke observed that a non-property interest is enforceable but bilaterally and requires some qualification.[167] Thus, it continues as proprietary when transferred while the original holder has exclusive right. Clarke concluded that its general enforceability is necessary ingredient but not so obviously a sufficient condition for an interest to be a property interest.[168] It has been noted that a non-proprietary interest might become binding by a constructive trust.[169]

Land has been seen as essential social security in Nigeria. To get a living, claims to land generate violent, legal conflicts and power struggles between families, individuals, local communities, state and federal governments. Private property rights create a form of monopoly over this basic and finite resource. Customarily and statutorily, people derive much of their personal, communal and even religious identity from their lands.[170] Landownership claim becomes more contentious when it contains economic mineral resources. Land is guided by rules and the law is tied to a physical reality on the ground (i.e. immovable property).[171] Nowadays, 'the pre-fix 'pro-poor' has recurrently appeared in the strategies and policies of major developmental agencies.[172] This is to regulate the activities involved in it. It makes the desire to formulate government policies more inclusive. It reflects the expansion of human rights law from individual to collective responsibilities in order to protect property rights and its interests.

The Nigeria constitution[173] provides: "the State (Federal Government) shall direct its policy towards ensuring that the material natural resources of the nation are harnessed and

[165] See generally, *Hill v Tupper* (1863) 2 H & C 121.

[166] *Hill v Tupper above. In the instant case* Pollock CB held that "the contract did not create any legal property right, and so there was no duty on Mr Tupper. If Mr Hill wanted to stop Mr Tupper, it would have to force the Canal Company to assert its property right against Mr Tupper".

[167] Clarke ibid p 155.

[168] Clarke ibid Pp 155.

[169] *Ashburn Anstalt v Arnold* [1989] Ch 1 cited in Clarke ibid at p 156.

[170] Robert Home, Towards a Pro-Poor Land Law in Sub-Saharan Africa in Robert Home (ed) *Essays in African Land Law,* Pretoria University Law Press (PULP) (2011) p. 25.

[171] Robert Home ibid

[172] Robert Home ibid

[173] CFRN 1999 s 16(2)(b).

distributed as best as possible to serve the common good". However, the state and federal concept of land and mineral exclusive ownership seems to centre solely on economic self-determination thus, limiting this to state and federal interests. This has resulted to wars, legal conflicts, societal unrest, youth restiveness; oil piracies, pipeline vandalism in Nigeria. The non-uniformed procedure for the exorbitant resources[174] has conspicuously become significant in Nigeria legal, socio-economic and socio-political theories hence, it surges ownership contests. Previous literatures have dwelled on peripheral and political solutions than legal and sustainable measures to ratify the contests. This affects countries with poor land and mineral resources administration[175] legal regimes like Nigeria.

Though, landownership and mineral contests are as old as the earth but, the issues have been approached differently across the globe. While some nations have adopted legal approach, some embark on political solutions. In Nigeria, previous literatures majorly relied on sociological and economical approach termed 'political solution' rather than legal or mixed approach as antidote. They were critiquing but were not offering solutions thus the needs for this work to systematically and doctrinally establish modern landownership and mineral model. This is by means of observation or experience rather than mere political theories, pure logic or judgement. In Nigeria, we have had decades of evidence and experiences of how the present legal system of landownership, mineral and environmental control have yielded negatively. Generally, the present approaches (legal regime and law enforcement; practice and policy formulations, law adjudications and implementation) weaken the entire legal system thereby ensuing conflicts.

A significant piece of this research is to uncover the legal unrest contiguous with decision in *AG Federation v AG Abia State & 35 Ors* as will be fully discussed in chapter four here. This Supreme Court decision will be tackled in two angels. One is on the ownership of oil mineral and the second ground is on resources control and revenue allocation. AJ Ikpang[176] concluded that the suit was erroneously termed as resource control, whereas it was solely based on the determination of the seaward boundary of littoral States to

[174] Mineral oils (hereinafter, referred to as petroleum, oil and gas, hydrocarbons, mineral resources)

[175] Incalculable interests in oil and lacunas found in laws had as well left the issues unembellished. As seen in Nigeria CFRN and LUA. Due to old nature of these laws and considering the current and evolving trends, most of these laws are already outdated and others could not follow the right legislative processes as there decrees of the former juntas and cannot fit into the present development. Enforcement, application and implementation of these laws became almost impossible because of some lacunas and its poor outfits.

[176] AJ Ikpang 'The Legal Chasm between Resource Control and the Determination of the Seaward Boundaries of the Littoral States in Nigeria', Nnamdi Azikiwe University Journal of International Law (AJOL) (2011) Pp 1 - 2, https://www.ajol.info/index.php/naujilj/article/view/82387 accessed 15/10/2017.

determine or calculate revenue accruable to such states from offshore oil accruals. Ikpang's hurried submission is weak with due respect. It is important to note the primary constituent of the suit was interest of ownership and control of oil resources in offshore zone. It is this interest that constitutes qualification for the benefit which was the subject of the matter. The offshore oil was not '*bona vacantia* - goods without an owner'. Under s 162 (2) CFRN, 13% of accruals of oil go to the states where it is produced. The contest is who to control and manage the costly resources and no more.

Some writers have argued on relationship of the legislation, the dwindling fortunes of the derivation principle in the constitution and over-centralization (non-involvement of the region where oil is been extracted) by the federation. Mahler[177] noted that there is "progressively diminishing revenue accruable from oil that has been allocated to the region by the federal government since independence from Britain". He noted that the percentage of oil revenues refunded to the oil producing regions was almost 100% between 1953 and 1959.[178] This was reduced to 50% by the 1960 constitution[179] and further reduced to 30% by the 1970 decree.[180] Subsequently, federal administration brought it to 5%, and later rose to 20%. The subsequent military government nailed it to 1.5%.[181] Under the 1999 constitution, the derivative principle went to 13%. This is percentage of oil revenue accruing to the federal government from any state which is to be paid back to that state under s.162. The present principle had left federal and state government into legal battles.[182] Ejibunu observed that this percentage has failed to satisfy the yearnings of these people. He continued, it had put into the hands of state governments in the region of Niger

[177] Annegret Mahler, *Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta*, GIGA Research Programme (Violence & Security) Working Paper, No. 120, January, (2010), p. 16.

[178] See A. E. Ogbuigwe, "The Law and Environment; The Niger Delta Challenge", Port Harcourt Law Journal, (1999), p.94.

[179] 1960 constitution of Nigeria s 134. See also 1963 Republican constitution s 140.

[180] See Nigeria Revenue Allocation Decree No. 13 of 1970. See generally, Hemen P. Faga, "Taming the Tiger in the Niger Delta: the Role of Law in the Niger Delta Question: Whither?" Akungba Law Journal, vol. 1:2, (2008), p.306.

[181] 'The Niger Delta: Phoenix of Nigerian Democracy', Vanguard Book Series, in Vanguard Newspaper publication of (January 22, 2000), p 27. In fact, some literatures had speculated that derivation actually hit an all-time low of zero per cent before another military administration fixed it at 1% and later raised it to 3%, where it remained until the coming into effect of the 1999 Constitution of the Federal Republic of Nigeria. See A. E. Ogbuigwe, op. cit., p.94. See further *United Nations Development Programme (UNDP): Niger Delta Human Development Report*, (2006), Abuja: UNDP.

[182] See again *AG Federation v AG Abia State & 35 Ors supra.*

Delta billions of dollars[183] since 1999 thus, requires liberalisation to state or individual ownership recognition.

As the previous literatures revolve on political solution, they ignored the significance of customary laws and judicial pronouncements on alter of political solution in matter of mineral resources and landownership in Nigeria. The practice in solid minerals is different to method adapted to oil minerals as discussed in chapter five of this work. Thus, overhauling of the national laws became imperative especially where it concerns land administration, mineral control and environmental management. Doctrinal approach adopted played vitally here because it is concerned with the systematic presentation and explanation of particular legal doctrines. The researcher assessing the significance of this approach has proposed for the unification of ownership of land and mineral by adopting the legal principle of *quid quid plantatur solo solo cedit* (he who owns the land owns everything in the land) applicable under customary law in Nigeria. It is also a common law practice of land and its appurtenances. A principle that any chattel attached to land becomes part of it and known as fixtures as decided in *Elitestone Ltd Morris & Anor.*[184] This principle is more important when issue of compensation for compulsory land acquisition comes. Though, there are skeletal literatures supporting researcher's proposal regarding the new land and mineral ownership in Nigeria. However, the approach is obtainable in the United States of America and has been seen in Nigeria cases with respect to fixtures under the *quidquid* principle. In US, one who owns land can also own the mineral underneath and his consents are necessary in oil or land acquisition by another.

Whereas there is little or no local previous literatures supporting the researcher's land-mineral ownership unification launch, there are some judicial and legislative approvals by inference. As noted above, this principle is a common law rule rooted in Roman law. Under it and by doctrine of *accessio*, Emeka Chianu[185] opined that the landowner takes the property in things added to his own if the addition is such that the thing cannot be separated without damage to the land. This principle is absolute of the law and depending on intention.[186] It is been submitted that the doctrine comprises accression and accretion by

[183] Hassan Tai Ejibunu, (Ronald H. Tuschl, ed.), Op. cit., p. 18. Brisibe stated the mineral resources have not had any positive impacts on the people of the region, or on the local economy and development despite its huge deposits. See A. A. Brisibe, African Tradition "The Identity of a People: With Special Focus on Globalization & Its Impact in the Niger Delta" C.O.O.L Conference, Boston, U.S.A, (March 18, 2001), p.1

[184] {1997} 1 WLR 687.

[185] Emeka Chianu. "Right to Improvements on Land in Nigeria" *Journal of the Indian Law Institute* vol. 32, No. 2 (1990), pp. 217-238.

[186] Emeka Chianu ibid at p 218

gradual deposition through the operation of 'natural causes' to that already in possession of the owner.[187] In this instant, the state governor having control of state land by s 1 of LUA and in extension, the individual landowners by ss 9, 34, 36 of LUA and ss 43, 44(1) of CFRN require rights over the minerals in their lands. These provisions recognise ownership by occupation prior to 1978 or by certificate of occupancy issuance. Thus, property should not be compulsorily acquired without due proper cause and compensation.

Quidquid principle rule has been given a judicial blessing in Nigeria. In *Ezeani v Njidike,*[188] house by its attachment to the land was considered here as belonging to the owner of the land by operation of the rule. Thus, minerals found underneath of someone's land need not be owned separately from the land. Nigeria court has embraced this rule as a good law in *NEPA v Amusa.*[189]Outside from court decisions in Nigeria, there is legislative approval of the rule under the Land Use Act. S 15(a) states: during the term of statutory right of occupancy, the holder shall have sole right to and the absolute possession of all the improvements of the land. This proviso by implication and inference acknowledges the rule[190] under discussion.

The Nigeria decision in *AG Federation v Abia State & 35 Ors* where the Supreme Court went on voyage of judicial discovery to US has made the researcher to borrow leave from the same country to establish important facts in support of land-mineral unification ownership. Like regular property rights, mineral rights can be bought, sold and transferred by individuals or government in accordance with state and federal law in US. Previously, it was done by fee simple deeds where private property owners and governments transferred or disposed of parcels of land. Unarguably, fee simple deeds are comprised of mineral rights and surface rights under this system. It provides their holders with the right to explore, develop, extract and market various resources under the surface of the applicable parcel of land. These can natural resources such as oil and natural gas, coal, precious metals like gold and silver, Non-precious or semi-precious metals like copper and iron and specialty or rare earth elements and minerals like uranium and scandium. Private or state-run exploration and extraction companies ink long-term leases to exploit these reserves. In Nigeria, no private ownership is recognized whatsoever by law. Sovereign government retains complete ownership of valuable sub-surface materials and land. Although property

[187] See *Gough v Wood & Co*.(1984) 1 QB. 714 @ 719.
[188] (1965) NMRR 95.
[189] (1976) 1 FNR 242
[190] Emeka Chianu ibid

owners who live above exploited reserves may be compensated, but they are not entitled to receive payment for the actual minerals or energy stores beneath their landholdings.

Government's economic self-determination stride limits this to the provisions of state and federal laws. Thus, non-uniformed procedure is affecting the enforcement which previous literature failed to note. It is indisputable that the present approach sidelines the people of the oil region in participating in the administration of land and mineral resources in Nigeria. According to Kaniye Ebeku, this deprivation despite the oil deleterious activities in the region was not conceived by Nigeria laws[191] thus, provoking more legal controversies.[192] The United Nations Development Programme (UNDP)[193] has described Niger Delta as suffering from "administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor, and endemic conflict."[194] Jedrzei Georg Frynas concluded that resources exploration incentives are not felt[195] in the region because they have no control of their natural resources. Both authors supported the transferring of land and mineral rights to individuals from the present federal central exclusivity theory. They noted that the oil region can only have benefits of their land if they have control of the resources. Researcher is in agreement with these submissions but disagrees with mere political measure they outlined. The writer argues that political measure is temporal while legal gauge guarantees their rights.[196]

Among the contending nations of private mineral ownership, United States is one of the countries of the world where mineral ownership can be vested in individuals as opposed to government exclusive control. The rights' origin in the US is varied and very interesting. It gives the private mineral owners the right to collect royalty income as well as the right to sell oil and gas royalties as they desire. Unlike Nigeria, individuals are legally authorized with rights to negotiate and sign leases on their minerals as well as the right to receive bonus considerations or yearly rental payments among other rights. Individuals are entitled to surface right and transferring mineral rights. By this, the owner of surface land may own the mineral underneath except where he transfers it or it is within government owned land.

[191] Kaniye Ebeku, ibid, U. D. Ikoni, A. Uchegbu and Nlerum ibid at pp 151 and 152.
[192] See Kaniye Ebeku, ibid and Nlerum ibid at pp 151 and 152.
[193] *UNDP, Niger Delta Human Development Report*, (2006). UNDP also noted that the majority of the people of the Niger Delta do not have adequate access to clean water or health-care delivery.
[194] We are researching to establish the relationship between the legal regime of oil and landownership in Nigeria and the loss of livelihood of oil inhabitant communities.
[195] Jedrzei Georg Frynas *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities).*
[196] See s 43, 44(1) CFRN and s 36 l LUA.

American court has in *Kelly v Ohio Oil Co.*,[197] held that oil and gas are fluids and may flow in the subsurface across property boundaries. In that way, an operator may permissibly extract oil and gas from beneath the land of another, if the extraction is lawfully conducted on his own property. However, John S. Lowe,[198] noting the importance of land-mineral unification ownership has stated that State law often limits the rule of capture which allows for exploration of closed-by oil to protect correlative rights of neighboring owners. This is not the case of government verses individuals as practiced in Nigeria.

Ohio Supreme Court of America[199] held that the recording of an oil and gas lease is a title transaction that affects title to an interest in land, qualifying it as a saving event under the state's Dormant Mineral Act.[200] The act sets forth a bureaucratic structure for 'reuniting ownership of quiescent severed mineral interests with ownership of the exterior'. Though in certain circumstances, it prevents reunification, such as when the severed mineral interest is the subject of a "title transaction," during the applicable statutory period. However, it has been held in another US court that the expiration of an oil and gas lease constituted a transfer of mineral interests.[201] Thus, the court pointed out that "it is self-evident that the termination or expiration of a lease returns the lessor and the mineral estate to the status quo prior to the lease."[202] In USA, government or its agencies may acquire land of an individual owner for some public purposes. In these cases, the owner's consent is vital and he is entitled for compensation of property and losses incurred or even the lost profits. The law established a reasonable amount of compensation for land expropriation. This is usually come through Executive Order or Agreement.[203] Apparently, these regulations and decisions recognise the land-mineral unification ownership by private individuals or government which Nigeria desires.

Furthermore, the Alaska Native Claims Settlement Act (ANSCA) of 1971 has created the Alaska Native regional corporations. Under ANSCA model, the native people of Alaska through their corporations own a large share of the resources in that territory which include

[197] 57 Ohio St. 317, 49 N.E. 399 (1897).
[198] *Oil and Gas Law in a Nutshell* (5th ed. 2009).
[199] *Chesapeake Exploration LLC v. Buell,* Slip Opinion No. 2015-Ohio-4551 (Ohio Nov. 5, 2015).
[200] Ohio Dormant Mineral Act, Rev. Code 5301.56(B)(3)(a).
[201] See the Michigan decision of *Energetics Ltd. v Whitmill* 442 Mich. 38, 497 N.W.2d 497 (1993).
[202] *Energetics Ltd. v Whitmill* ibid.
[203] See Compensation for Expropriated Lands. (Exchanges of notes at Washington November 9 and 12, 1938 and April 17 and 18 1939. Entered into force in November 12 1938, Superseded April 2, 1942 by Convention of November 19, 1941' 53 Stat. 2442; Executive Agreement Series 158.

land and minerals. Thus, *Delgamuukw v British Columbia*[204] decision recognises the occupier's rights and traditional customary law by implications in Canada. The *Delgamuukw* rule notes that aboriginal rights exist and that oral history are taken as evidence. 'It encouraged the governments to negotiate agreements with First Nations claimants'.[205] More importantly, Patricia Marchant has noted that individual states also own land. She stated that between the two levels of governments, about a 3rd of all land in the United States is state owned. The author continued that in case of Canada, land and resources are within provincial jurisdictions. In an attempt to give clearer explanation of what mineral is, she aptly noted: "Property rights are social definitions, not made in heaven. They exist as long as the society is willing to enforce them. If enforcement is missing, they cease to exist".[206]

Therefore, the state (federal) formally owns only a few national parks and wilderness areas, and reserve lands for First Nations peoples and there is no such provision of exclusivity of mineral or land by the government Canada. But, the provincial governments retain public lands and charge resource rents for harvesting or mineral rights as the case may be. Note that only private ownership of land has usually been the determining factor for use of land; pollute water or use of water resources. Patricia Marchant opined that 'if you own land, you usually have riparian rights to stream water and seniority rights to groundwater'.[207] Despite the fact that the struggles have suffered some setbacks, they are, now, gaining legal and social supports for their land claims in Canada. It is therefore submit that land-mineral ownership unification is recognised in many nations as enumerated above supporting the researcher's new proposal in Nigeria.

The research observes non-unification of mineral resources with land as the major cause of contention that previous literatures and existing laws have not settled. The total usurpation of mineral rights is obsolete common law and alien to the customary law originally practiced in Nigeria. This was when one who owns land owns everything upon and under it. A novel concept this research termed, African traditional land ownership theory. The research propounds this theory to establish the validity of customary law of landownership in Nigeria to draw its authority over minerals. This is to avert possible extinction of this property right in nearest future in Nigeria. It relates to it as it affects control mechanism of

[204] [1997] 3 S.C.R. 1010.
[205] M. Patricia Marchak Who Owns Natural Resources in the United States and Canada? Land Tenure Centre, North America Series, University Wisconsin, Working Paper No 20 (October 1998) Pp 2 – 8 at 6.
[206] M. Patricia Marchak
[207] M. Patricia Marchak ibid at p 1.

land, mineral and its appurtenances, value and customary heritage in Nigeria by the government. The doctrinal approach has shown that there is no law of land acquisition in Nigeria. What is available in LUA is inchoate to undertake all functions to meeting up with the expectations. Presupposes that the LUA is part of the constitution by s 315, specificity is desirous in the Nigeria land ownership and mineral control models.

In England and Wale, there are laws that laid down this issue in clear and in unambiguous manner. Land Compensation Act 1961 s 5 generally requires that the owner of an interest in land such as a freehold, leasehold or easement receives payment for the "value of the land... if sold on an open market by a willing seller". [208] Compensation is properly assessed[209] and often available for losses to a home, or if one's business must move.[210] Also, the Compulsory Purchase Act 1965 sets conditions for a purchase to be made, while the Acquisition of Land Act 1981 regulates the conditions for granting a Compulsory Purchase Order. Characteristically, either central government usually represented by the Secretary of State, or the local council may be interested in making a compulsory purchase. The authority of local councils can make purchases for specific reasons by setting out in specific legislation, such as the Highways Act 1980 to build roads or for other purposes like laying of oil pipelines when strictly necessary.

However the Town and Country Planning Act 1990 s 226 allows compulsory purchase to "facilitate the carrying out of development, re-development or improvement" for the area's economic, social, or environmental wellbeing. [211] This must be confirmed by the Secretary of State. Correspondingly, the Local Government Act 1972 s 121 requires the council to seek approval from the government Minister, a time-consuming process which prevents compulsory purchase being carried out without co-ordination in central government. In Nigeria, due to the lack of codification and unification of land with mineral rights, government acquires land indiscriminately with or without due process and commensurate compensation especially for mineral exploitation. Note that the change has been effected in India. There, land acquisition is governed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR).[212] This provides individuals with better benefits during compulsory acquisition unlike

[208] *Re Ellenborough Park 1955 ECWA Civ 4, 1956 Ch 131.*
[209] See *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] UKPC 7.
[210] See *DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852).
[211] This was provided by the Planning and Compulsory Purchase Act 2004 s 99.
[212] This came into force on 1 January 2014. Also, the land acquisition in Jammu and Kashmir is governed by the Jammu and Kashmir Land Acquisition Act 1934.

Nigeria. In Nigeria, it is reasoned that the conflict of landownership and resources' control is due to lack of fair legislative frameworks, proper enforcement and equitable participation in the land and petroleum resource projects. These conflicts do not have much relationship with foreign resources developers rather; it revolves around the resources' ownership model.

The second issue for contest is the impact of oil exploitation in oil Region. Some literatures have focused on how the oil activities led to the depreciation of people's life in the region due to oil pollution and gas flaring leading to environmental degradation, wildfire, and land decay.[213] Government is said to be receiving considerable revenues and royalties from land acquisition and mineral resources' developers. It is more when it involves petroleum. However, this has impacted little for communities and regions of oil zones.[214] Citizens see the resources being hauled out in apparent flow of wealth while on the ground, they can only see just problems, environmental decays and loose of livelihood, farms produce, and aquatic lives. These have left them resentful and apprehensive, as they lose their environment[215] and means of livelihood.

Amnesty International,[216] has noted that "the poverty in the region contrasted with the wealth generated by oil, which has become one of the world's starkest and most disturbing examples of the "resource curse". While CNN[217] had the following to say: "the Niger Delta is a region where time seems to have stood still and where people live the most meagre of existences, leaving them bitter and angry from not having benefited from the black gold that makes Nigeria Africa's largest producer". Note that Nigeria crude oil is not processed within Nigeria over a long period of time. The country imports over 85% of the refined oil products it uses, yet it is the largest oil producer in Africa. The capacity of the four state-owned refineries[218] is limited no private refinery has been built in Nigeria.

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[213] Jedrzei Georg Frynas *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities* (Lit Verlag, 2000). See also Clande Ake, 'Shelling Nigeria ablaze', available at http://www.cohdn.ca/news/1-1/6.html. Accessed 18/5/2014.

[214] Cyril Obi, "The Crisis of Environmental Governance in the Niger Delta 1985 – 1996", African Political Science Association, Harare-Zimbabwe, Occasional Paper Series (Vol. 3, No. 3), (1999), pp. 1–35.

[215] Chris O. Opukri and Ibaba S. Ibaba., "Oil Induced Environmental Degradation and Internal Population Displacement in The Nigeria's Niger Delta", Journal of Sustainable Development in Africa (Volume 10, No.1), Fayetteville State University, Fayetteville, North Carolina, (2008).

[216] Amnesty International, Nigeria: Petroleum, Pollution and Poverty in the Niger Delta, (2009), p. 9.

[217] Tumi Makagbo, 'CNN, Inside Africa' aired on 2nd October, 2004, http://transcripts.cnn.com, Accessed 2/2/2014.

[218] Amnesty International had also confirmed that as a result of poor management of the oil industry, especially the downstream sector, the entire industry employs only 35,000 people directly or indirectly. See Hassan Tai Ejibunu, Ronald H. Tuschl, (ed.), *Nigeria's Niger Delta Crisis: Root Causes of Peacelessness, EPU*

It is vital to note that the relationship between the multinational resources developers and local communities can only be improved through legislative instrumentality than embarking on wasteful expenditures and frivolity of mere political solutions. The impacts of this give citizen-landowners concerns over the resources' exploration. These resources have been continued to be tapped with their rights over it being swiped away. Just as landownership and mineral resources are being threatened by extractive bustles, man's surrounding is not left out. Despite the international mechanism designed to protect these rights globally, communities and families within the oil extraction sites have continued to suffer untold hardship. Their land and environmental rights are also been violated[219] while its advocates are facing government's threats and attacks.[220] What is to be considered is how much government policies and national laws have done in ameliorating crisis and stabilizing oil and non-oil mineral management.

Osaghae[221] chronicled the conflicts of oil ownership in Nigeria over a period of time. He acknowledged that what is today considered as militancy in oil region started since 1980s in a low key by youth and other regional movements. This was subsequently captured by the political classes of the oil producing states as means of providing political pressure on oil revenue allocation process. He observed that the creation of laws was made to take away their immediate benefits and terminate participation of its control. Fears and grievances of the 1980s and minority militancy of the 1990s were factored towards it. Again, the environmental challenges due to oil activities could be seen as another factor militating crisis. In February 2006, a Federal High Court sitting in Port Harcourt ordered SPDC to pay $1.5 billion to "Ijaw Aborigines of Bayelsa State".[222]

Research Papers, Issue 07, (2007), p. 16. See also *Energy Administration Information (2009): Country Analysis Briefs – Nigeria,* (2009) p. 4 available at http://www.eia.doe.gov/emeu/cabs/Nigeria/pdf.pdf accessed 29/3/2016

[219] See combination of constitution ss s 20 and 6(6)(c). Importantly is on how the approach enumerated should not be out of alignment with international jurisprudence or standard.

[220] On 10 November 1995, Ken Saro-Wiwa and eight of his colleagues were executed by the then military government was widely criticized. Shell "has always maintained the allegations were false" and says that it appealed to the Nigerian Government to "show clemency on humanitarian grounds to Ken Saro-Wiwa and his co-defendants". See Business and Human Rights resource Centre, http://www.business-humanrights.org/Documents/Oilpollution/Nigeria/Saro-Wiwa. Accessed on 02/03/2014. This can go to established that these rights were not guaranteed by the 1999 constitution of Nigeria.

[221] E. Osagae, "Do ethnic minorities still exist in Nigeria?", Journal of Commonwealth and Comparative Politics, 24/2 (1986) pp 151-168.

[222] In suit No SC.290/2007 now supreme Court decision in *Chief (Dr) Pere Ajuwa & Anor v The Shell Petroleum Development Company Of Nigeria Limited* (2008) 10 NWLR (Pt.1094). It was where Justice Okeke

Contributing further to this complication, Ebeku noted that the enactment of the LUA and Petroleum Act have put to a stop of the oil companies in approaching the oil people. These include negotiating access to their land for oil operations; terms of payment of compensation of exploration effects as previously practiced before inception these Acts. Government usually acquires a vast area of land from these communities for petroleum purposes without people knowing anything about it[223] or having compensations. They can wake up from sleep to find that government has given out their farmlands or homes to oil operators. The concern resulted to the opinions of decentralization of control of mineral oils and landownership from exclusive or central control regime. This will allow for easier management and proper involvement of indigenous landowners and other stakeholders in the exploitation of oil within or found in one's land or boundaries of communities or states.

What attempted to ameliorate these conflicts in the new regime were the proposed Petroleum Industry Bill (PIB) 2012. The Nigeria Oil and Gas Industry Content Development Act 2010 as amended which received presidential assent on April 2nd 2010. Though not conclusive, but it created a legal frameworks for indigenous content in oil and gas industry in Nigeria. The Content Act gives exclusive consideration to Nigerian indigenous service companies, Nigerian personnel and capacity to executive and bid such work on land and swamp[224] operating areas. S 3 provides; "The Nigeria independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and in all projects for which contract is to be awarded in the Nigeria oil and gas industry subject to the fulfilment of all conditions as may be specified by the minister". S 8 of proposed PIB, supporting the Nigerian Content Law provides that the federal government shall at all times promote the involvement of the indigenous companies, manpower, use of locally produced goods and services with respect to the Nigerian content. Detail is in chapter four.

By its s 3(3), the Act notes that compliance and promotion is major criterion for award of licenses and permits or any other interest in bidding for oil exploration, production and development of any other sector of oil and gas industry in Nigeria. S 7 of the PIB proposes for community development. It states, "The federal government shall, in co-operation with the state and local governments and communities, encourage and ensure the peace and

rejected a stay of execution by Shell and ordered the company to pay the Central bank of Nigeria the full amount no later than May 22nd 2006.

[223] Kaniye Ebeku, Op. cit, p. 15

[224] See s 3(2) of the Act.

development of the petroleum producing areas of the federation through the implementation of specific projects aimed at ameliorating the negative impacts of petroleum activities". However, s 3(1) gives the minister overriding power and control that whittles down the full enforcements of the provisions. Again, under PIB, s 4(1) gives the minister the right to grant petroleum licenses. In Nigeria, the president usually takes the portfolio of the petroleum minister[225] and dictates the operations of the sectors though no law supports such appointment.

Other literatures on the Nigeria oil political power have been swinging around derivation principle.[226] Ejibunu evidently showed how unemployment became major concern in the oil exploitation zones with its adverse impacts on peace and stability of the region.[227] Another concern to the communities appears to be the agriculture been destroyed and water fouled by oil industry activities. Omeje[228] concluded that "this largely unexplored or overlooked aspect of politics in extractive economies seems to have the most decisive implications for dysfunctional conflict or lack of it in different countries and regions of the global South, including Nigeria".

This prevailing disenchantment is without regard to the consistent recognition by government of the Niger Delta as a region that requires special developmental needs due to what it gives to the nation and what its environment is undergoing over the years. Another apparent gap in most of these literatures is an interjected trans-historical multi-regional structure of reinter politics in her legal and extractive economies. These have rigorously explored the accumulation devices and tendencies of key stakeholders in their interplay[229] with the structures of domestic and international political economy. This gave the Supreme Court opportunity to import an alien ruling in decision *AG Federation v AG Abia State & 35 Ors supra* in favour of federal government against the littoral states on continental shelf case regarding derivative principle under s 162 of the constitution. The new federal

[225] In Nigeria present government, the President has appointed himself the petroleum minister. This was followed with a new description of PIB due to disparagements to legislate on the PIB contents and geographical interests. A new version of the law was crafted from the PIB 2012 and named it 'Petroleum Industry Governance Bill 2016 for the purpose of regulatory reform of oil and gas industry. S 1 of the latest Bill gives the minister exclusive responsibilities to determine, formulate, monitor all government policies for petroleum industry. Minister has sole supervisory over the affairs and operations of the industry and to advise the government in all matters pertaining the industry.

[226] See constitution s 162(2).

[227] See Hassan Tai Ejibunu ibid p. 4. The region has scarcely witnessed peace or co-existence for decades.

[228] Kenneth Omeje, 'Extractive Economies and Conflicts in the Global South: Re-Engaging Rentier Theory and Politics', (Ashgate London 2003) pp 1 – 2. The derivation principle explains Nigeria method of oil revenue allocation.

[229] Kenneth Omeje op cit.

influence over the oil control has been seen in the latest version of Petroleum Industry Governance Bill 2016 noted above. Its s 1 erodes the entire responsibilities and monitoring of checks and balances of the law into the hands of the president who doubles as the petroleum minister. Although, s 1(e) supports the local contents however, it appears that the new law was hurriedly made and has attracted scathing criticisms across geographical zones.

FIGURE 1: NIGERIA MAP WITH STATES AND INTERNATIONAL BOUNDARIES

SOURCES: Nigeria Map. http://www.total-facts-about-nigeria.com/physical-map-of-nigeria.html Accessed on 20/09/2016.[230]

The disparities between customary tenure in Nigeria, contention of the states on ownerships of land and minerals[231] with federal government appears to be caused by the LUA. S.14 LUA provides that any law relating to way of prospecting oils or mining and oil pipelines are subject to the terms and conditions of any contract made under the section. The occupier shall have exclusive rights to the land. This is the subject of the statutory

[230] Physical Nigeria Map with insight and knowledge of 36 states and the capital territory and to African map with countries Nigeria has common boundaries - Cameroon, Benin Republic, Niger Republic, and Republic of Chad with Gulf of Guinea.

[231] Particularly when considering provisions of s 44 (3) above and spirits of s 5 (1) (a) and 6 of the Land Use Act and s 14 respecting to rights granted for mineral exploration. See also N. O. Adedipe et al Rural Communal Tenure Regimes and Private Landownership in Western Nigeria, Land reform, (1997) <http://www.fao.org/waicent/faoinfo/sustdev/Ltdirect/LR972/w6728t13.htm>. accessed on 03/02/2014

right of occupancy against all persons other than the Governor.[232] Considering further the expropriation of LUA on indigenous land for oil extraction and other matters, USAID[233] noted that land is a unique, valuable and immovable resource of limited quality and that is not the only basic aspect of subsistence for many people. Nwokolo stated that the swift emergence and domineering of oil over agriculture from the 1960s and 1970s, made the Nigerian military government to promulgate the land use Act in 1978 to take over land.

The Act brought about a land reform system by vesting the ownership of minerals to the federation of Nigeria and land on the state governors.[234] While to Ako,[235] Land Use Act was promulgated to nationalise all lands in the country. It was noted that an increase and difficulty experienced by private or government institutions in acquiring land for development prompted the nationalisation of land the decree. Though, legislation exists to empower governments to acquire land compulsorily for public purposes. It was observed in the Third National Development Plan that the cost was exorbitant[236] in some of Nigeria urban. The LUA facilitates it thus:

> Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall if that land was on the commencement of this Act being used for agricultural purposes continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the custom of the locality concerned, allowed to lie fallow...[237]

Nwokolo enthused that land and labour remained the two commonest factors of production with easy access to local communities in Africa. This is measured as the main asset in sustaining the livelihood of most local African Communities and Nigeria in particular.[238] Jennings and Watts[239] asserted that the fundamental resource of the nation state is land

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[232] See *Nkwocha v Governor of Anambra State* supra.

[233] See *US Agency for international Development land and conflict- A toolkit for Intervention*; Washington D. C, USAID (2004), http://pdf.usaid.gov/pdf_docs/Pnadb335.pdf accessed 4/4/2016.

[234] Ndubisi Nwokolo, 'Land ownership and Conflict in Nigeria: Understanding the Oil-filled grievance and greed in Niger Delta,' a paper presented at the 7th SGIR pan European Conference on International Relations, Stockholm, (9th-11th September, 2010).

[235] Rhuks T. Ako, "Nigeria's Land Use Act: An Anti-thesis of Environmental justice"; Journal of Africa Law, Vol. 53, No 2, (2009), pp 289-304.

[236] Land Use Policies since 1960,'Nigeria: Report of Rent panel (1976), p 67, via http:/www.online Nigeria.com/land/? Blurb= 529> Accessed 5/4/2016

[237] Land Use Act s 36(2) supra. Note that s 51(2) LUA provides federal right over federal land.

[238] Ndubisi Nwokolo ibid.

[239] R. Jennings and A. watts, eds, *Oppenheim's International Law* (London) (1992), p 121

while for Datong, human society, fauna and fora all through the world heavily depend on land and its resources for survival. He submitted that, "it is not an overstatement to say that without land there would be no human existence". The earth will be empty and formless with possibly no minerals resources. This is because, "it is from land that man gets items very essential for his continued existence such as food, cloth, shelter, medication"[240] including mineral oils.

Olayiwola and Adeleye opined that "a careful and more detailed analysis of the role land has played in the lives of the people makes it vital for their existence. More importantly, how the system of land tenure has evolved affected the lives, beliefs and general disposition of the people who live on the land. These led to some fundamental attitudes."[241] By s.1, the LUA legitimised the appropriation of land in the regions by the governor and s 3 empowers him to design non-urban land. To, Bola Fajemirokun, the abolition of private ownership of land by Land Use Act, was based on three reasons: "(i) to facilitate access to land for public and private use, (ii) to promote tenure security, and (iii) to curb land speculations, which had been driving land values upwards and out of the reach of most Nigerians"[242] especially in the southern Nigeria. Oluwole stated that 'land use act regime established a system of right of occupancy harmonizing the various degrees of proprietary interest in land subjecting same to the radical title of the governor."[243] The above authors may be right on account of economic purposes but the disposition is affecting the cultural and political characters of Nigeria people in many ways.

Notwithstanding the negative effects of the Act in Nigeria, the communal land right is still vested in Trustee Law of Western Nigeria 1959. This has consequently changed the shape of communal land administration in Western Nigeria. It was occasioned as a result of abuses and mal-administration of land by their tribal chiefs.[244] Landownership in the

[240] P. Z. Datung, *The role of the state government in the implementation of the LUA*, in Adigun O. (ed.), The LUA Administration and policy implication (Lagos: UNILAG PRESS); (1991) p 121.

[241] Lason Mykail Olayiwola and Olufemi Adeleye, 'Land Reform: Experience from Nigeria', 5th FIG Regional Conference Accra, Ghana (March 8-11, 2006).

[242] Bola Fajemirokun, 'Land and Resource Right issues of Public participation and Access to land in Nigeria' via http://www.nigerianlawguru.com/articles/land%20law/LAND%20AND%20RESOURCE%20RIGHTS%20IN%20NIGERIA.pdf accessed 6/4/2016.

[243] Imran Oluwole Smith, *Sidelining Orthodox in Quest for Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria,* (Lagos: UNILAG PRESS, 2008).

[244] This legal Instrument had now separated the traditional chiefs of their customary or administrative powers over land vested same to the Board of Trustee that is appointed by the government. This makes government to be solely responsible for the dealings on the issues of communal land matters thereby causing more invasions and unrest among villagers and neighbouring communities.

Eastern Nigeria is communal, individual and public in nature. The communal landownership or tenure continues to move towards individual or private ownership because of strong population pressure. The Act battles the trend and attempts on the side of governing authorities to modify land tenure system and access of land for public overriding purposes.[245] In spite of this interest, customary landownership tenure has continued to regulate access of land in most of the rural areas but not where mineral oils are found. This is because the Act changed the face of these facets and had produced a number of unforeseen developments under the Nigerian land tenure.[246] It is seen that these changes are been influenced by socio-economic, socio-political and institutional factors.

Oil and gas with its value at the international market boost economic and legal development of Nigeria despite its downturn. However, there is no comprehensive legal framework for the management of property rights or land ownerships and minerals in Nigeria. This could be attributable to political motivation on part of the government due to interest and economic importance of the mineral oils. Another factor is ineffectiveness state law, ignorance on part of the local communities and 'private landowners' which resulted to mineral-landownership split law (1999 constitution). They have found it hard to press home their demands without causing more ethnic, legal and societal unrest. It is indisputable to state that property rights should be considered along intellectual rights to make its ownerships more evident and secured. To Frynas,[247] LUA s 28 has shown that the governor was empowered to revoke a right of occupancy for overriding public interest and it includes 'the requirement of land for mining purpose or oil pipelines, or for any purpose connected therewith'. Ako, observation was in line with Frynas.[248]

Despite how long they have inhabited on it, the law makes occupiers of land mere 'tenants at will' of the government and oil industries.[249] Nwokolo stated that the Act which vested the land of the Niger Delta regions in their state governors had "promoted the use of land in the region for oil resources production rather than agriculture, and in most instances, have the crisscross of oil pipelines to contend with over space". Their farms or fishing

[245] E. O. Arua, 'Multi-dimensional Analysis of Land Tenure System in Easter Nigeria', Centre for Rural Development and Cooperatives, University of Nigeria, http://www.fao.org/sd/ltdirect/lr972/w6728t14.htm accessed on 23/03/2014.

[246] See E. O. Arua above.

[247] G. Frynas, Oil *in Nigeria, Conflict and Litigation between Oil companies and Village communities*, Hamburg: LIT Verlag, (2000).

[248] The inhabitants of oil producing region are usually dispossessed of their land whenever land is required. See Rhuks T. Ako ibid

[249] Rhuks T. Ako ibid

waters suffer from constant pollution from oil spill.[250] The abnormal burden of the Act, as observed by Rhuks T. Ako,[251] was on the inhabitants of the Niger Delta region that hosts upstream activities of the oil industry. He noted that the Act was specifically made to divest those inhabitants of their rights from participating actively in the oil administration.

The legal advantages enjoyed by the government and oil companies in the context of this controversial Act effectively alienate oil communities from their traditional and cultural resources.[252] This made oil land the most contentious in Nigeria[253] putting a lot of pressures on government and people of the region. Amali has pointed out that over 70% of the total Nigerian Population lives in the rural areas. Over 60% of the population engage in agricultural related occupations.[254] Nationalising land has negative impacts on the society.

FIGURE 2: OIL SPILL ON COASTAL WATER AT OGONILAND IN NIGER DELTA

SOURCE: Aniefiok E. Ite et al. Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta. (American Journal of Environmental Protection, Vol. 1, No. 4, doi:10.12691/env-1-4-2, 2013) Pp 78-90.

Nigerian socio-economic and political development is traceable to her contacts with the British colonialism. Another angle is the growth of the Islamic concepts of land tenure

[250] Ndubisi Nwokolo ibid.

[251] Rhuks T. Ako, ibid.

[252] Catholic Secretariat of Nigeria, 'The travesty of oil and gas wealth,' (Lagos: Francis (Nig) printers, 2006).

[253] Rhuks T. Ako, ibid

[254] Whereas oil pollution takes the left over spaces for inhabitation, fishing and agricultural aims. See E. Amali, 'Financing Agriculture in a depressed Economy Governance,' VOL 1 (April, 1988) cited in Ndubuisi N. Nwokolo,' Land ownership and conflicts in Nigeria: Understanding the oil-fuelled grievance and greed in the Niger Delta', Paper presented at the 7th SGIR Pan European Conference on International Relations, Stockholm, (9-11 September 2010).
http://www.eisa-net.org/be-ruga/eisa/files/events/stockholm/Land%20ownership%20and%20conflicts%20in%20Nigeria-%20Understanding%20the%20oil-fuelled%20grievance%20and%20greed%20in%20the%20Niger-delta.pdf. Accessed 8/4/2016.

which traces its origin to the Fulani jihad of the early 19th century.[255] The third trend is the native law and customs of various ethnicities. These evolved into her legal system. There is no doubt that these transformed the parameters of a system of land tenure occasioning multiple of land tenures systems in Nigeria. It gave birth to plural legal system of land as noted above.[256] The transformation of the early tenure system,[257] the existing tenure with modern time legislations and rules[258] have triggered off staggering consequences on ownership and rights of access to land or minerals. This evolving regime of exclusive control and management of the land tenure and the mineral resources[259] now became order of the day in modern world.

The efficiency of this operation depends upon an acceptable regulatory framework. This will take cognisance of major characteristics of the system of land tenure and mineral control regime. Thus, having a view to harnessing the individual features in the direction of effective land use and management which is been discussed in this work and recommendations made to fill the gaps at the concluding parts of the research. Smith noted that an attempt to harmonise the system must make way for the ascertainment, recognition and preservation of basic principles.[260] Prosterman & Hanstad concluded that land being the primary source of income, security, contention and status for millions of families globally,[261] it is not surprising that decisive improvement is required on it.[262] Effective land and mineral law reform can lead to increase of production in the mineral industry. This was conceived by the proposed PIB and Content Act. It will enhance capital investment; reduction of impacts of human activities on the land from oil exploitation and improved access to credit.[263]

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[255] Smith I. O., (2008) ibid

[256] The legislative control and rights or ownership of land could also be traced to the British colonial rule which commenced with the cession of Lagos land to the British monarch in 1861 through the Treaty of Cession of 6th August 1861. The impacts of this treaty were also seen in *The Attorney-General v John Holt & Co. & Ors* 2 QB384; (1972) 2 All E.R. 471 and the *Attorney General v W .B. McIver & Co. & Ors* 2NLR at pp.4-5 cited in *Attorney General of the Federation v Attorney General of Abia State & 35 Ors* (2001).

[257] Like the communal land ownership, family tenure of inheritance and local or white cap chief control etc.

[258] See Nigerian LUA and her Constitution of 1999 as amended etc

[259] This includes among other things, oil and gas which its ownership and implications form the major contention in this research.

[260] I. O. Smith ibid.

[261] It can enhance income generation; reduction of poverty and unemployment level through the provision of basic needs of life such as food, shelter and employment. It can also reduce urbanisation; social unrest and legal instabilities. It will better environmental stewardship; industrial growth, waste to wealth especially in the area of oil and gas exploration.

[262] See Roy Prosterman and Tim Hanstad, *Land Reform: A Revised Agenda for the 21st Century, RDI Reports on Foreign Aid and Development*, Washington (2000), p 2.

[263]Prosterman & Hanstad, (2000), ibid.

Omeje[264] added that the Act in theory makes land a property of the state and vests its allocation and administration in the state governor. And as a result of oil exploration, some people became landless and this affects their livelihood negatively. It was based on this dispossession and expropriation by government through these laws[265] that resulted to the rise of conflicts and legal battles within the region. The movement for the Emancipation of the Niger Delta (MEND) had once stated: "we will fight for our land with the last drop of our blood regardless of how many people the government of Nigeria and Oil Companies are successful in bribing".[266] This is in confirmation of the strong Africa adage that, "if a provoked house boy cannot match his wicked master strength with strength; he maims the wicked master's favourite goat".[267]

English Law[268] formed part of Nigeria legal system by colonization. The historical context of Nigerian land law is similar with the English legal jurisprudence. Tenure and estate of land in England and Wales dates back to 1066[269] when these doctrines were established at the common law courts. This was when it was trying to work out fundamental principles of land law. In 1290, the Statute of Quia Emptores 1290[270] was established which began to end feudal system.[271] This subsequently developed into equitable estates and interests alongside common law estates and interests. It further led to the 1535 Statutes of Uses 1535 and the Tenures Abolition Act of 1660 that reduced the effects of feudal system of tenure thereby creating a modern form of mortgage. These series of developments led to the coming of the 1925 LPA and other land legal instruments[272] in use in Britain, mostly now practiced in Nigeria.

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[264] Keneth Omeje, *High Stakes and Stakeholders- oil Conflict and Security in Nigeria,* (Hampshire UK: Ashgate publishing Limited, (2006).

[265] Land Use Act s 28 ibid

[266] ibid

[267] There are countless pressure groups emerging in the oil producing region and invasion of the military leading to oil facility vandalization, abduction of foreign investors, loss of lives and properties. These can be curtailed under an efficient legal framework when it assures security of land tenure with proper definition of landownership and access to it. Law needs to provide good mechanism for effective land titling, sustainable land use and resourceful management, efficacy of transfer and devolution of land rights. This will give good understanding of rights to land, mineral resources and governance with more modern approach.

[268] Common law of England, principle of equity and statute of general application

[269] The Norman conquest of 1066 led to the birth of equity.

[270] This was statute passed in the reign of Edward I of England in 1290 that prevented tenants from alienating their lands to others by subinfeudation, instead requiring all tenants who wished to alienate their land to do so by substitution. The law passage began the end of feudal system.

[271] Clarke and Greer (2010).ibid

[272] See Cooke, ibid at p 15

Philosophically, land tenure seemed to be a mirror of human relationship between him and his nature. It connotes the nature, manner, value, beliefs and extent of landholding, rights or ownership of land in a communal setting. Oludayo acknowledged that, this includes the control, use and management of land and its natural endowments and how the features are being dictated by legal construction in modern time.[273] The system of land tenure globally is dictated by a variety of historical, socio-cultural and economic factors which vary from one system to another. These include significant of influences from Roman law on the concepts of ownership and possession in English law. Smith had opined that the social and political influences came from the plural land tenure system[274] like Nigeria and other evolving legal system. The legal framework is designed to regulate system of land tenure or ownership and rights over its resources. This must take cognisance of these credentials for efficiency, social emancipation and economic development[275] among countries endowed with natural resources.

2.4 LAND ACQUISITION AND COMPENSATION IN NIGERIA

Sustainable development and struggles for human survival require that government across the globe must provide her citizenry with social amenities, facilities and infrastructural developments. This is required for subsistence and maintaining of health and safety, ensuring social security, social welfare and economic enhancement. This was provided to combat and facilitate the enormous challenges of her teeming population. Also to protect, conserve, restore, explore her natural endowments such as natural resources and still sustain the environment. To achieve these, acquisition of land became imperative for the appropriate and necessary for overriding public aim like oil projects. Other purposes may be for construction of government offices, official residences and industrial developments.

LUA, s 28(1) provides, "it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest". On the other hand, it may be for the exploration of natural mineral resources[276] as this research is examining. S 28 (3) (b) of the Act says overriding public interest includes "requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith". When acquisition takes place, compensation follows.

[273] See I. O. Smith, *Practical Approach to Law of Real Property in Nigeria*, 2nd ed. Ecowatch Publications Nigeria (2007) pp 38 - 39.

[274] I. O. Smith *Sidelining Orthodoxy in Quest for Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria* (University of Lagos Press; An Inaugural Lecture Delivered at the University of Lagos on Wednesday, (18th June 2008).

[275] Ibid. This will give impetus to this rights and what they cover.

[276] See Land Use Act s 28.

However, one can ask what determines compensation or quantifications under the Act. S 29 of the Act only mentioned developed land or cash crops as what should be compensated. No other grounds or value of land and livelihood of the occupiers was conceived or contemplated by Act even with certificate of occupancy.

In many nations, mineral resources rest with the government. Hobart King[277] noted that this includes every valuable rocks, minerals oil or gas within the surface and underneath boundaries of the country. No one in that country can legally explore and sell any mineral of such commodities without obtaining an authorisation first sought from the controlling government. In Nigeria, Petroleum Act[278] s 1 (1 - 3) provides that the entire ownership and control of all petroleum in, under or upon any land shall be vested on the state. The Act gives government exclusive duty and rights to control the oil resources. It permits its extraction through license as the Act enumerated. If right of occupancy is revoked for causes in s.28, the occupier is entitled to compensation under the Act.[279]

The Governor may direct that any compensation payable to be paid to the community; or to the chief or leader of the community. He may direct it to be disposed of by him for the benefit of the community in accordance with the applicable customary law.[280] S 29(4) (a) provides that compensation under subsection (1) respects to the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked. This rent is insignificant today compared to the value of land and what it produces. So far, minerals belong to the Federal Government; the owner of the land has the rights over it and entitled to compensation when acquired. The de facto of communal land cannot be easily filtered by s.29(4)(a) of the Act. If critically examined, it cannot stand by virtue of recommending compensation clause of an amount equal to the rent paid if any during the year the right of occupancy is revoked. Too, the Act failed to conceive individual implications of oil pollution[281] and their impacts on human and his environment.

[277] Hobart King, 'Mineral rights/Oil and Gas Lease and Royalty Information,' (2006) http://geology.com/articules/mineral-rights.shtml (accessed 4/5/2015).

[278] Petroleum Act cap 350 LFN) (originally Decree No 51 of 1969).

[279] Depending whether customary or statutory right of occupancy. But lacks clarity in the Act makes its provision provocative. See s 29 of the Act.

[280] S 29 (3) (A – 3) ibid.

[281] It only noted generally concept of breach. This may have forced the court to mandate compulsory payment as payment in *Chief (Dr) Pere Ajuwa & Anor v The Shell Petroleum Development Company Of Nigeria Limited supra.*

In *Rawyards v Coal Co.*,[282] compensation was meant to restore the injured party to the position he was prior to the acquisition and harm or injury complained came. The kind of compensation claimed is dependent on the kind of damage that occurs. This may only apply to oil pollution and not for compulsory acquisition of land for its exploration. Issue for strong determination the Act left is quantum of compensation considering its devastating effects. Black's Law Dictionary[283] defined quantum as a Latin word which means the required, desired or allowed amount; portion or share. The court in *Rawyards* awarded damages for the unauthorised removal of coal from beneath the appellant's land, even though the site was too small for the appellant to have mined the coal himself. The appellant was also awarded damages for the harm done to the houses on the surface.[284]

Sampson Akanimo,[285] observed that the central statutory liability under Oil Pipeline Act s 11(5), is to pay compensation while Ekpu, emphasized that there are three threads where a victim of oil pollution may have compensation from oil industry. It could be at statutes, at the common law and under the rule of international law.[286] Arbitrary fixing of value for economic crops or trees is being practised in Nigeria because the LUA failed to provide any methods of assessment rather, it puts the function in the hands of appropriate officer.[287] By s.1 and s.29(4)(a) of LUA, bare land compulsorily acquired by the government may not be compensated. Compensation is within the governor's discretionary.[288] The confusion is where such land is acquired compulsorily for oil and solid mineral exploration.[289] King reiterated thus, "in as much as the general purpose of a lease or a purchase contract is to convey the rights of exploitation and production to a mineral development company that

[282] *Rawyards v Coal Co* (1880) 5 AC 25

[283] 8th edition, P 1276

[284] If damages are to be awarded at all for compulsory acquisition, the aim must be to put an injured party: "in the same position as he would have been into if he had not suffered the loss for which he is now getting his compensation or reparation." See *Rawyards* Ibid.

[285] Sampson Akanimo, 'Oil Pipelines Act and Niger delta conflicts- Nigeria OAK,' (14th May, 2012)

[286] A.O. Ekpu, 'For Oil Pollution Damages: the Need for Equity', Society of Petroleum Engineers Nigerian council, 20th Annual International Conference and Exhibition, PTI, Effurun, (1996), p 258.

[287] LUA s 29(4)(b). Even though the Act did not defined who is the 'appropriate officer'. Under s 29 (4)(c), it could be derived that an appropriate officer should be an Estate Surveyors and Valuers.

[288] See unreported cases of *Sule Ahmadu Dogo and 7 Others v Hon. Commissioner Ministry for Lands (Unreported) Suit No. NSHC/MN/109/2002, Survey and Town Planning and 2 others* and *Hassan Doma Bosso v Commissioner of Lands and Anor* (Unreported) Suit No. NSHC/MN/101/2002 cited by M. B. Nuhu, and A. U. Aliyu, "Compulsory Acquisition of Communal Land and Compensation Issues: The Case of Minna Metropolis". FIG Working Week 2009 Surveyors Key Role in Accelerated Development Eilat, Israel, 3-8 May (2009). In the former, court held that compensation was paid though without specification to its fair or adequacy while it was held in the later that no compensation was paid.

[289] There are scarce of cases with respect to compulsory land acquisition for petroleum operations due to influences of the federal exclusive control, risks and financial issues involved. Litigation is always seen as opposition to federal might and may be frustrated.

has obtained a licence, the owner of the surface still has some rights". These fundamental rights of the surface earth are to be exercised by owners as provided by state various laws. He observed that every surface owner should decide if stronger protections are needed as results of the oil extraction activities.[290] This may be provided by the contractual agreement in Nigeria called joint venture.

The term "surface right" was defined by Black's Law Dictionary,[291] as "surface interest" and every right in real property other than the mineral interest". The surface right owner or surface interest owner is entitled to whatever non-mineral substances that may be found in or underneath the land. Surface rights may include land and space or environment. To Roy Spooner,[292] surface right is every right in land other than mining rights. Okwechime submits, "where there is acquisition of surface rights (land), there will be payment of compensation to the land owners for the land per-se, and items such as economic trees, cash crops, building, structures, which exist naturally ('fructus naturales'), or are on the land as a result of man-made improvements ('fructus insustriales')".[293] Land right requires protection. Law should prohibit unlawful acquisition of land[294] and discharge of petroleum products onto land, river or creek, waters of port, a sewer, or into supplies.[295]

In some countries, government 'purchase'[296] land through market value[297] while in others, specific land parcels are 'compulsorily acquired'.[298] This maybe for the purposes of accommodating new route of hydrocarbon exploration, pipeline or for the protection of certain zones from flood and or for the fulfillment of requirement of redistributive of land reforms. In some instances, the land required may not be disposed for sale at the needed

[290] This is to protect cash crops, structures, personal property, easement and animals. See Hobart King ibid.

[291] 10th ed, at p 1680

[292] Roy Spooner, *S & W Mining and Surface Rights,*' (The S & W Report the Newsletter of the Ontario Woodlot Association), Vol 29 (2002).

[293]Vincent M. Okwechime, 'Environmental Pollution Laws and procedure Guiding the Computation of Claims,' Materials of the 14th Workshop Alpha Juris Continuing Legal Education Series, (2003) p 8

[294] See s 29 supra and *Administrator of Abacha Estate* decision supra. See SS 43 and 44(1) CFRN.

[295] Vincent M. Okwechime ibid p 17. Environment cannot be protected without first preserve land.

[296]Compulsory purchase and compensation booklet 4: compensation to residential owners and occupiers published by Department for Communities and Local Government 26 October 2004 https://www.planningportal.gov.uk/planning/planningpolicyandlegislation/currentenglishpolicy/goodpracticeguides/comppurchase. In some regions or countries too, this may be by compulsory purchase as the case of Scotland in United Kingdom etc. See the following laws: Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; Compulsory Purchase of Land (Scotland) Regulations 2003, The Compulsory Purchase of Land (Scotland) Regulations 2003; Town and Country Planning (Scotland) Act 1997.

[297] See *FAO Land Tenure Studies* 10 at paragraph 1:1 (Compulsory acquisition of Land Compensation), Food and Agriculture Organization of the United Nations Rome (2008).

[298] A. A. Utuama, *Planning Law Implications in the Land Use Act, 1978*, in Omotola, J.A. (ed.), *Essays in Honour of Judge T.O. Elias* (Lagos: Faculty of Law, University of Lagos, (1987) pp. 95 105.

time. To enable the government acquire those lands when needed, it exercises its power of 'compulsory acquisition or purchase' as the case maybe. Thereby, compelling the owners to vacate the land or sell it in order for the land to be used for the proposed aim. In some countries, government can compulsorily acquire lands for such purposes by mere notification on the owners or occupiers of its intention to acquire it.[299] Some nations termed compulsory acquisition 'compulsory purchase', land acquisition, resumption[300] with various degrees of bottlenecks. The researcher will focus more on the acquisition of land for mineral resources exploration and nature of its compensation on citizens with impacts it creates.

Ownership and compulsory acquisition is major contention globally due to the rapid political growth, high demand of land and pursuits for economic stability. Mineral exploration is one of the major issues in the facet of land acquisition. Governments of different nations are under stiff pressure to deliver to their public some overriding services[301] in the face of already high growing need of land with many policies and dialogues being reported. FAO[302] has deeply highlighted compulsory land acquisition as an 'area that is filled with tension'. This has been often viewed as conflictual and inefficient aspects of the process are the constraints to economic growth and national developments. Generally, land acquisition public overriding can bring into a country some good incentives as much as it affects the measure to maintain the environmental sustainability.[303] The same process usually brings anxiety among the people who are threatened with dispossession of their lands. Such important things in life like homes, businesses, livelihood, cultural heritage sites, and places of worships are lost.[304]

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[299] See generally S 28 LUA. These principles are differently treated across nations including Britain, Canada and USA el cetera. See also *Nkwocha v Governor of Anambra State supra.*

[300] FAO Para 1:1. *FAO Land, Tenure Studies* http://www.fao.org/nr/lten/lten_en.htm accessed on 10/03/2014.

[301] S 28 LUA. See E. N. Nnamani, 'Place of the Land Use Act in the Legal Framework for Environmental Safety in Nigeria', Nigerian Bar Journal, vol. 5, no. 1, (2007) pp. 97-106; Nnamani, E. N., *Fundamentals of Nigerian Land Law under the Right of Occupancy Regime*, Info Fact, Enugu, Nigeria (2003); B. O. Nwabueze, *Nigeria Law*, Nwannife Press, Enugu Nigeria (1972) and P. S. Ogedengbe, "Compulsory acquisition of oil Exploration Fields in Delta State, Nigeria: The Compensation Problem", Journal of Property Investment & Finance Vol. 25 No. 1 (Obafemi Awolowo University, Ile-Ife, Nigeria),(2007) Pp. 62-72.

[302] See Global Forest Resources Assessment 2010 of Food and Agriculture Organization of The United Nations Rome, 2010. See also The Infrastructure Planning (Interested Parties) Regulations No. 102, 2010 and T. Allen, Property and the Human Rights Act 1998, Oxford / Portland Oregon, Hart Publishing (2005).

[303] See G. S. Akpan, "Host Community Hostility to Mining Projects: A New Generation of Risk?", in E. Bastida, T.Wälde, and J. Warden-Fernández, (Eds), *International and Comparative Mineral Law and Policy: Trends and Prospects,* The Netherlands, Kluwer Law International, (2005) pp. 311-330.

[304] Its impacts displace families, villages, ancestral homes, separate families and relationships and rise restiveness. Topical examples could be seen in Nigeria Niger Delta Region as results of acquisition of land for oil and gas exploration, Nigeria Federal Capital Abuja because of acquisition of land for its expansion and

This is seen as a result of poor acquisition and compensatory legal mechanism. While it enriches the government treasury, it impoverishes the masses and their environment. This may deeply affect communal livelihood, deprive them their vital religious and cultural sites; destroy networks of social relations especially where this is inadequately planned or executed. It leaves inhabitants homeless, landless and neglected. It impinges on their living and access to necessary social amenities as seen in Niger Delta Nigeria.[305] This may lead to complaints and conflicts by the inhabitants. They may be abandoned or suffer abject poverty with grievous injustices by these policies and legislations.[306]

Note, if compulsory acquisition is done by compulsory purchase, it will leave the people or communities in an equivalent situation and at the same time, provides the intended or required benefits to the government and the society at large.[307] Thus, the Land Use Act high objectives need to be actualised through constitutional safeguard of citizens' rights and access to land in Nigeria.[308] It will ensure effective equitable distribution of land and considerable compensation. Again, virile management and enforcement of the constitution[309] makes land available for investments, and creating sustainable environment for its ownership. With approach to land acquisition with stable and quantified compensation will remove all mindless administrative bottlenecks or corruptive application of the acquisitions law[310] in Nigeria.

Whether a governor can revoke right of occupancy and re-allocates to another was raised in the *Administrators & Executive of the Estate of Abacha v Eke-Spiff* supra. The court held that the state Governor (then the Military Administrator) acting on the provision of s 28 did not act with good faith or in accordance to the law where he revoked private land rights and re-allocated same to another individual. Under s 28(1) LUA, the Governor has the

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various developmental projects and same to Lagos State of Nigeria and across the country 36 states and its capital. What is the situation in Ghana etc? See further L. Cotula, forthcoming, "Regulatory Takings, Stabilization Clauses and Sustainable Development", Journal of Investment Policy, OECD.

[305] Other examples may include Iraq, Libya etc as much as the Niger Delta Region of Nigeria.

[306] Omuli Iwere, 'What Effect Does the Ownership of Resources by the Government have on its People: A Case Study of Nigeria?' CAR CEPMLP Annual Review: CAR, Vol. 11.
http://www.dundee.ac.uk/cepmlp/gateway/?news=29307 accessed on 30/03/2014.

[307] See Compulsory purchase and compensation booklet applicable to England.
http://www.andywightman.com/?p=2830 accessed on 02/04/2014

[308] S 43 op cit

[309] S 43 supra. This is of international concern. See L. Cotula, "Legal Empowerment to Secure Land Rights - Defining the Concept", in Cotula, L., and Mathieu, P. (Eds), *Legal Empowerment in Practice: Using Legal Tools to Secure Local Land Rights in Africa,* Rome/London, FAO/IIED, (2008)a pp. 7-19, http://www.iied.org/pubs/display.php?o=12552IIED&n=9&l=252&c=land accessed on 11/03/2014.

[310] See the *Administrators & Executive of the Estate of Abacha v Eke-Spiff* (2009) All FWLR (Pt 467) 1.

power to revoke a right of occupancy only for 'overriding public interest'. The fact that the right of occupancy of the land of the plaintiff was revoked by the Governor was not in dispute.[311] It was held that, it must be exercised within the ambit of the law.[312] In another parlance, how this may be approach where the federal government acquires land for oil exploitation and reallocates it to private multinational oil firm remains questionable.

The court in the instant case noted further that by re-allocating the same plot of land to private person, the State Governor cannot be said to have satisfied the provisions of the law. S.28 (1) and (2) provides, "it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest". S.28 (2) of the Act defines what 'overriding pubic interest' in the case of a statutory right of occupancy means. By no means can the re-allocation of that revoked plot to former Head of State satisfy the aforesaid provisions.[313] Ownership of land is a paradigm of this provision which ought to be respected and maintained in accordance with the law. In *Nkwocha v Governor of Anambra State & Anor*, the Nigeria Supreme Court interpreted the word 'vested' to mean 'that which is vested in ownership' meaning that the same word used in ss 34 and 36 of the Act is thought to be the same meaning. This is because property rights have been seen as part of human rights law.[314] Clarke has noted their uneasy affiliations.[315] The author continued that its protection against the state is fundamental to everyone in maintaining the rule of law. The arguement has been contended at international and domestic constitutional levels in reconciling their divergences and interests.[316]

The European Convention on Human Rights (ECHR) 2010 Article 1 Protocol 1 provides that land can be acquired against the interests of the owner if it is in the public interest and done in accordance with the law. The Scottish Government has recently introduced such powers in order to acquire land. But, there is a well-established body of statute and case laws which provide guidelines for the Parliament when framing any new powers of 'compulsory purchase'. Court of Session upheld this position as contained in Part 3 of the

[311] That the same land was re-allocated to Major General Sani Abacha (former Head of State of Nigeria) admits no argument. It is equally true that no notice of revocation was sent to the 1st plaintiff/respondent the court found.

[312] S 29 needs to be complied with following s 28 application despite the averment of s 1 of the Act. This is pertinent as the governor holds the land for 'trust and for benefit of the citizens. He needs not unjustly exercised these rights.

[313] See Per Aderemi, JSC at pp 39-40, paras G-F in *Administrators & Executive of the Estate of Abacha v Eke-Spiff supra*.

[314] Alison Clarke. 'Property, Human Rights and Communities' in Ting Xu & Jean Alain (eds) Property and Human Rights in a Global Context (Hart Publishing, 2015) pp 19-39.

[315] Alison Clarke (2015) pp 19 – 21.

[316] Alison Clarke 2015 ibid. This also supports the provision of CFRN S 43 noted earlier.

Land Reform (Scotland) Act 2003 in *Pairc Crofters Ltd v Scottish Ministers*. The law provides powers for crofting communities to purchase croft land against the wishes of the owners. The Lord President ruled that this law actually provides a level of protection to the landowner that equalled or surpassed anything required by the ECHR.[317]

The Africa Charter on Human and Peoples' Rights,[318] Article 21 (1 - 3) notes:

> All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. In case of spoliation the disposed people shall have the right to the lawful recovery of its property as well as to an adequate compensation… The free disposal of wealth and natural resources shall be exercised without prejudice...

S.1 of the Charter provides that "the provisions of the Charter shall, "have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria."

Assuring an effective equitable distribution of land requires fulfilment of genuine public purpose as laid by the Act. It is ground for government acquisition of land and making land ownership real. Application for land allocation must adduce reasons and all unauthorized acquisitions not in line with the law must be rejected or upturned by judicial review. The present position where the Governor owns no obligation to the citizenry for revocation and acquisitions in illegal manner is arbitrary exercise of power over a common resource.[319] The provision of s.5 of the Act should be considered for an amendment to make Governor's power purposeful and equitable. The quest for oil exploration and other industrial developments will come to naught where revocation and acquisition of land lose human face or ingredients of law. The foreign investors with the required capital and technological capacity may also be excluded from holding rights of occupancy by s 1[320] of the Act.

Any developing country that opens her frontiers to foreign investments and technological transfer cannot afford to gap behind. Rasmus Heltbag[321] opined that in some developing

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[317] See *Pairc Crofters Ltd v Scottish Ministers* [2012] CSIH 96 at 68.

[318] (CAP 10) 1990 LFN33.

[319] *Administrators & Executive of the Estate of Abacha v Eke-Spiff.* See again s 1 of the Act.

[320] *Nkwocha v Governor of Anambra* State & Anor (1984) 6 SC 362-419, (1984) 1 SCNLR 634. The supreme court here interpreted the word vested" as used in s 1 of the Act to mean vested in ownership meaning that the same word used in ss 34 and 36 of the Act is thought to be the same meaning.

[321] R. Heltbag 'Property Rights and Natural Resources Management in Developing Countries', (2001). http://www.gsdrc.org/docs/open/SSAJ39.pdf accessed on 21/02/2014.

nations, citizens depend on their national capital while in some others, citizens depend wholly on the utilization of their natural resources like land, seas, forests, farmland, air, grazing areas, plants and animals to earn their living. In most of the developing nations too, these natural resources are increasingly been exposed to unsustainable exploitation through compulsory acquisition of land or aftermath of oil exploration. Example is pollution from time to time. The researcher reasoned that the result of this incessant acquisition is that when natural resources get degraded or perished, people's livelihood will disappear.

Garret Hardin's much cited criticism of the "tragedy of the commons", hypothesized that the common land resources, lacking ownership, were doomed to over-exploitation.[322] This is against the background that the common property rights were seen as the casual factor behind resources destruction. It will be ideally in the user's private interest to preserve and harvest resources before it is be tampered with by external forces. What is owned by all is owned by none. Where they lose their rights over their property and management of their land by compulsory acquisition, they lack the incentives or ability to conserve it for future use. Under the Petroleum Regulation, Regulation 25[323] provides that the licence or lessee shall adopt all practicable precautions, including the provision of up-to-date requirement approved by the Chief Petroleum Engineer to prevent the pollution[324] of in-land water way, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline, or marine life.

Property right to land and its natural contents[325] are imperative factor for the inhabitants and national economic growth and thus, should be considered prominent. This shapes efficiency of environmental management, encourages productivity, distribution of resources and values for the citizenry especially in an agrarian society. Right to land also shapes security of tenure to land and enhances incentives to undertake investments on land if well enforced. Variation in property rights is substantially found over-time, across communities and individuals. This is seen in Africa culture where access to land is seen to be *de jure* or *de facto* and being governed by the traditional norms and value. It occurs

[322] See R. Wade, "The management of common property resources: Collective action as an alternative to privatization or state regulation". (Cambridge Journal of Economics 11 (1987)) pp 95-106.

[323] See Petroleum (Drilling and Petroleum) Regulation 1969 with amendments in 1973, 1979, 1995 and 1996.

[324] Where any such pollution occurs or loss occurred, he shall take prompt steps to control and if possible, end it. Any breach may result to compensation. Thus, compensation is not limited to land acquisitions.

[325] Mineral resources like oil and gas, gold, stones, water, trees numerous to be mentioned here are veritable.

where land is controlled by the communities or clan and being allocated through usufruct rights to individual parcels to its members like Barron and Roth.[326]

Everyone on earth has right to land in different ways but outright sales are restricted in some nations. In most cases of South Asia, land is being owned by private persons not including forests, pastures and wasteland. These are commonly owned and controlled by the State.[327] It is vital to note that land rights play prominent roles in sustainable growth of a nation and salient factor of her political economy. Land in diverse society has a number of important cultural and religious commutations.[328] In the South Asia and Africa, land constitutes major asset and a substantial proportion of household wealth.[329] Its distribution is strongly correlated with income. The manner government exercises the rights of compulsory acquisition in Nigeria undermines land tenure security. Often, little or no compensation is paid.

2.5 INTERNATIONAL CONCEPTIONS AND ENVIRONMENTAL LAWS ON OIL EXPLORATION IN NIGERIA

Global environment is a sin qua non for sustenance of human life on earth. Oil exploration is one of the substances that pollute the surface and aquatic environment. It militates against human co-existence. The effects endanger marine, fresh water and brackish ecosystem worldwide.[330] It is perceived as the real enemy of the world and most devastating environmental contaminants. Its effects destroy farmland, flora; fauna, marine and terrestrial life. As it harms the environment and causes health hazard[331] leading to economic loss. Awobajo[332] noted that from 1976 to 1980, Nigeria has had over seven hundred and eighty four oil spills. Pollution is strictly defined as contamination of oil, air, water by noxious substances and noises. It arises from oil pollution, gas and shipping

[326] See Allan Ingelson and Lincoln Mitchell (2009),"The Glamis regulatory takings claim and compensation under NAFTA", Journal of World Energy Law & Business, Vol. 2, No. 1. (2009).

[327] See also Iyenemi Ibimina Kakulu, The assessment of compensation in compulsory acquisition of oil- and gas-bearing lands in the Niger Delta *land* Settlement and Cooperatives Journal 01 (*2008)*; pp 56-65.

[328] See Rasmus ibid p 199

[329] It has been stated that in Pakistan, actual and imputed income from land accounted for more than half of income inequality and its incomes turn the inquest sources of inequality. See Rasmus ibid.

[330] B. E. Idowiboye and J. A. Andy. "Effects of oil pollution on Aquatic Environment". Seminar Proceedings (1985) p 311.

[331] Jehwo Jalaju. 'Laws of Regulating Oil Pollution in Nigeria: A Re-appraisal'. Htt://www.legaloil.com/downloadfile%20/laws-regulating-oil-pollution-in-nigeria.pdfaccessed 15/04/2016.

[332] S. A. Awobajo. 'An Analysis of Oil Spills incidents in Nigeria, 1979 – 1980'. In the Petroleum Industry in the Nigeria Environment. Proceedings of International Seminar (9th – 12th 1981) pp 57 – 63.

operations. It alters quality of the environment to the detriment of its use by man,[333] or flora and fauna.

Nigeria first effort towards dire consequences of pollution was the Associated Gas Reinjection Decree No 99 1979.[334] S.5(1)(1-2(b)) only provided for a 2 Kobo penalty for gas flare and 15 Kobo for cubic meter. This punitive measure is meagre and did not stop gas from being flared by oil companies. There are international environmental laws that guide environmental relationship of the world. Such as Kyoto Protocol that followed from the United Nations Framework Convention on Climate Change. There are other environmental and natural resources laws coming from treaties, conventions, statutes, regulations and customary law made to address the activities of human on the natural environment. The essence is to ensure that the world is not fouled unnecessarily and countries are bound by their obligations. International measures to curb oil pollution began in 1926 on request of the USA.[335] International Convention for the prevention of pollution of the sea by oil was accepted in 1969. Article IX (1) provides that vessels shall record all cleaning, balloting of cargo tanks, and accidental discharge of oil or its residue.[336] These regulations have been fragmented especially at the domestic levels leaving environment to be polluted unabated. This makes remedial actions expedient. The conventions have been giving some nations solutions to oil pollution as previous environmental disasters have catalysed governments, international agencies, UNCLOS, oil companies into positive actions to prevent future disasters.

International laws consist of treaties or conventions agreed on by signatory nations. International community has developed some general policies and principles to cover cases of trans-boundary pollution. This can apply without the need for treaty.[337] Jehwo has noted that there is an improper regulatory framework on the environment stating that 'the only source of life will render human life nasty, poor, solitary, brutish and short'[338] if not checked. The researcher has considered environmental issues to be discussed along the land and natural resources. Therefore, the significance of environmental laws is mostly

[333] M. M. Olisa. 'Legal Framework for Pollution Control in the Petroleum Industry'. Proceedings of an International Seminar (9th – 12th 1981) above. See also Jehwo ibid at p. 46.

[334] Amended by Decree 7 of 1985.

[335] This was done through Inter-governmental Maritime Consultative Organization (IMCO) an affiliate of the United Nations. See Jehwo ibid p 51. There have been Tory Canyon disaster 1967, Canada waters in 1967, and the Santa Barbara Channel oil spills from offshore wells in 1969 similar to the recent Gulf of Mexico spills of 20th April 2010.

[336] See 1962 Convention Article III (c) that imposes defaulters with breaching fine.

[337] See Simeon Ball and Sturt Bell op cit pp 20 – 21.

[338] Jehwo ibid p 54

appreciated by imagining the usual disorder that characterises the absence of laws in a given society. To avoid this, Nigeria became signatory to a number of conventions[339] that relate to oil pollution and environmental safeguards. Prior to 1988, laws on environmental conservation were insignificant in Nigeria. Her first law on it was the Pre-Federal Environmental Protection Agency Decree No. 58 1988. This led to the degradation of her environment as there was no law to be enforced. Thus, "it would be wrong to consider the enforcement of environmental laws as disincentive to industrialisation and an investment bearing in mind that development which is not sustainable is not development in its totality".[340]

The country was woken up by the Koko toxic dump that prompted Decree establishing Federal Environmental Protection Agency 1988 (FEPA).[341] The Agency was saddled with the administration and enforcement of the environmental laws in Nigeria. In addition, the government enacted the Harmful Waste (Special Criminal Provisions) Act, 1988, to deal specifically with illegal dumping of harmful waste. The country has the following environmental laws prior to FEPA. Mineral Oil Act, Petroleum Act, Oil Pipeline Act, Mineral Oil (Safety) regulations 1997, the Petroleum Regulations 1967, Oil in Navigable Waters Decree, Oil in Navigable Waters Regulations 1968[342] and others which were mostly colonial laws. It was noted that legislations regulating oil pollution before FEPA were only on ad hoc bases and thus made their actions deficient. The effectiveness of these laws was not felt or determined. Even though it imposed some obligations as deterrent, they were still inadequate.

Environmental laws in Nigeria are decrees promulgated by the then military administration. They are yet to be amended to fit into the present environmental challenges. This is because when environmental regulators are faced with situation involving environmental risks, usually, the option they take is to be quite and do nothing. Nigeria ad hoc regulatory measures have been criticised for lack of temerity. Also, the

[339] These includes: International Convention for the Prevention of Pollution of the Sea by Oil 1954 – 1971, the General Convention on Continental Shelf and the High Seas 1958, the International Convention on Civil Liability for Pollution damage (IOPC Fund 1971), the International Convention for Prevention from Ships as modified by Protocol of 1978, Convention for Prevention of Maritime Pollution by dumping of waste 1972, the Bio-diversity Convention at Rio – de – Jenerio 1992, the Montreal Protocol and Vienna Convention on Ozone Protection among others.

[340] Jehwo ibid p 56.

[341] Julius O. Ihonvbere. "The state and environmental degradation in Nigeria: A study of the 1988 toxic waste dump in Koko." *Journal of Environmental Systems* 23.3 (1994) pp 207-227.

[342] Others includes the Petroleum Act Regulations 1974, the Association Gas Re-injection Decree 1979, Petroleum (Drilling and Production) Regulations 1973, and FEPA Decree 1988. See our notes 92 and 118.

power vested on Petroleum Resources Minister has been seen as lacking certainty with some regulations. Regulation 25[343] provides that licensees and lessees should take prompt steps to control oil pollution where it occurs and if possible end it. In this circumstance, oil workers may not afford to control pollution and end it. They do not have any obligations to take such challenges or precaution neither do they have commitments under these regulations to conduct their operations in a 'business-like manner' or in accordance 'with good oil field practice'. This phrase is a mere general statement with no legal compulsion or undertone. Again, s.5(1) of the Associated Reinjection Decree which provides poor penalty for default cannot be relied on.

In Europe, it has been observed that in process of application of international environmental rules, legal obligation from an environmental treaty is long and complex. It cannot be measured as seen among the EU member states who also partner with other members to an environmental treaty as noted by Timo.[344] But the European Union implements these treaties through legislative Acts. From these directives, they implement and enforce them in the various member states under their domestic laws. This task has been seen as a great responsibility in international circles. Timo continued that where, "in a state 'A' contracts a fellow party to an agreement, the state to discuss a case of pollution damage potentially caused by that state, it is a challenging situation for officials in state B as the reputation of their state in the international community is stake".[345] International Environmental treaty or rule is a matter of international obligation and where this is breached among the civilized nations, it attracts enormous spate of criticism and penalty on the defaulter as case of Gulf of Mexico by BP in 2010.

Some schools of thought have been proposed in obedience to international environmental treaties on how compliance could be improved among member states. This has been subjected to a lot of scholarly arguments.[346] The facilitative school argues that parties to international treaties should be aided and assisted by the treaty community to meet their

[343] See Petroleum (Drilling and Production) Regulations 1969.

[344] Timo (2012) p. 19 op cit.

[345] See case of Enskeri of Finland Tanker who was on its way to dump a large amount of arsenic on the high sea in 1975. This attracted spate of criticism on Finland as that was against its international environmental obligations and as a result Finland stepped back from dumping the arsenic proposed ridding off. See also Holger Rotkirch, Tapaus Enskeri in Timo Koivurova (ed) in Timo (2012) p 20. See also, Edward D. Goldberg, Edward, "Marine Pollution: Action and Reaction Times" in Oceanus Vol. 18 No. 1, (1974) pp 6, 12-13. Ritchie-Calder, Lord "Polluting the environment" The Centre Magazine Vol. II (May 1969) p. 11 in Okidi, C.O, *Regional Control of Ocean Pollution: Legal and Institutional Problems and Prospects* (Sijthoff & Noordhoff,) (1978) p. 17.

[346] See Timo K. ibid p 20.

obligations. They noted that states should not deliberately breach their treaty commitments and where it does, it could be because of lack of resources or knowledge. This principle is often too bureaucratic and it is applied in a routine manner. Those that are responsible for the application are ignorant often or at the unknown that the obligation exists. This emanated originally from environmental treaties among the dualist countries where obligations are internalized in their domestic legislations.[347] The Kyoto Protocol 1994 was down-played as some nations with greenhouse gas-emitting like US, India, China had no binding reduction obligation until 2016.[348]

The second school of thought had argued in favour of enforcement, stating that the good news about the co-operation is the news about its compliance.[349] The school opining that these treaties can be observed primarily because the obligation established by it is weak. It concluded that when such international obligations established start hurting states' own interests, they will no longer observe the said treaties.[350] This may be as contained in the principles of climate change regime - compliance committee which has facilitative and enforcement branches.[351] Studying these schools, one can see that it is the degree of compliance and degree of breach when it seems deliberate should matter most as both argued differently. There are significant features in each of the schools. The researcher is concerned with polluter pay principle among nationalities and private enterprises for their pollution and compliance[352] to international obligations or treaties.

This challenge asks question on how best or the most efficient strategy for keeping human environment safe from emerging challenges of man's activities. It raises concern on

[347] Local officials think and see it as their local laws that are being applied while in fact, it is international environmental treaties that were domesticated into their local legislations. The obligations as enumerated above are still facing firm challenges as some nations had in one way or the other refused to join international treaties or protocols. See K. Timo ibid p 21. Though, the Kyoto Framework seemed not to be tackling the quantum of present environmental bottlenecks.

[348] UNFCCC has further brought more recent approach. As at 7/11/2016, 100 Parties have ratified out of 197 Parties to the Convention including the US. Note, on 05/10/2016, the threshold for entry into force of the Paris Agreement was achieved. The Paris Agreement entered into force on 4 November 2016. The first session of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA1) will take place in Marrakech in conjunction with COP 22 and CMP 12. See UN Framework Convention on Climate Change on Paris Agreement - Status of Ratification http://unfccc.int/paris_agreement/items/9444.php. Accessed on 07/11/2016. This can be a boost the environmental challenges if all countries concerned fully enforced. However, it is doubted as the US president recently backed out of the Agreement.

[349] G. W. Down, D. M. Rocke, & P. N. Barsoom, 'Is the good news about compliance the good news about the co-operation? The International Organization and Massachusetts Institute of Technology (1996), http://www.nyu.edu/gsas/dept/politics/faculty/downs/goodnews.pdf assessed on 26/03/2014.

[350] See G. W. Down et al ibid.

[351] See Timo K., ibid at pp 20 – 28.

[352] Timo ibid p 24. But this is yet to come to shores of Nigeria environmental laws.

whether the focus should centre on the enforcement of existing international environmental legislations. Note that it is only the country who undertakes to be bound will be bound by international treaties. An effect this has on international environment[353] becomes important. Article 208 gives parties more obligations to take all necessary measures to prevent, reduce and control pollution arising from oil rigs. It requires the domestic laws to be no less effective or proactive than international legal instruments, standard and recommended procedures. Accordingly, UNCLOS Article 192, 'States have the obligation to protect and preserve the marine environment'. This principle was applied to the Mexican oil disaster in 2010 (the Deepwater Horizon operated by BP) which exploded in Gulf of Mexico causing global environmental issues.

In setting environmental best standard, there have been some literatures which examined this but in civilised nations. Stuart Bell and Donald McGillivray[354] have enumerated the issue of public participation in environmental decision-making. The scholars submitted that "the process of change has been relatively swift with increased participation control regimes and planning. The introduction of formal environmental impact assessment and the need to implement the requirement of Arhus Conventions 2001[355] is to be considered. This convention had led to European Community (EC) to adopt participation in certain environmental plans and programmes.[356] But in developing countries, these are taken by government and its officials without recourse to public opinions or its consequences on their environmental sustainability. This is because in the stark contrast to the environmental planning system, most pollution control techniques require hand rudimentary notification and consultation processes. The nature conservation decisions were almost entirely issues determined by experts without recourses to the general public interest or contributions. Whereas, any wrong decision on environment is bound with consequences.[357]

Bell and McGillivray stated that public participation in the environmental policies had been viewed to consist of efforts to influencing policies, laws and various degrees of decisions made by the government or regulatory bodies. It includes other things involved

[353] Note again that USA as stated above is not a party to UN Convention on the Law on the Seas.

[354] Stuart Bell and Donald McGillivray. *Environmental Law*, (Oxford University Press, Great Britain), (2006), pp particularly in pp 336 – 338

[355] Access to justice in environmental matters held in Danish in Arhus on 30/10/2001. See Article 6 – 9. This is because in the stark contrast to the environmental planning system, most pollution control requires effective or pro-active attention to avoid its occurrences. Gulf of Mexico case is at hand.

[356] 2003/35/EC

[357] See Bell and McGillivray ibid p 337.

in order to access good understanding, evaluation, formulation and comments on different proposals of such plans or programmes. They concluded that it can take form of 'pluralistic participation' where representatives will speak on behalf of the individuals and stakeholders participation. Where such proposed policies are transmitted to interest groups for comments, deliberation and participation, it involves 'agreeing the ground rules'.

Public opinions are sought and obtained on what the policies could be before getting them proposed.[358] Note that participation can have degrees of force. For instance, where EIA is involved, public participation is a mandatory requirement and it's a pre-condition for grant of planning for oil prospecting or exploration permission. Other participations come through procedural rights with voluntary participation which makes efforts towards best practices. Or elicit issues for settling any environmental risk, hazards and, or for compensation of any harm suffered. It can be to prevent these harms on people, property or from their environment. It provides for incentives to improve on the environment and express social condemnation on any environmental harmful practices or attitudes and to raise awareness of environmental problems and internalize list of the producers towards environmental restoration.[359]

It is clear that the enumerated process is only obtainable in advanced countries. In Nigeria, there are no such provisions or policies. This hampers the efforts and policies of government. There is issue of ignorance from policies and low understanding and adherence to what constitutes environmental degradation in Nigeria. Many have resorted to oil piracy while others focused on oil pipelines vandalization and expatriates abduction. More are involving in other related environmental challenging attitudes. Some are with full knowledge of how their acts contribute to serious environmental pollution but carry such actions as revenge or to register their grievances on the loose of their land, mineral resources' rights and livelihood due to environmental degradation.

Under Integrated Pollution Control (IPC), Part 1 of the EPA 1990,[360] the Act embodies the general international practices. This is particularly the European Policies in favour of a co-

[358] Bell and McGillivray ibid at page 338.

[359] Ibid pp 356 – 357. See also the Finland decision in *Enskeri Tanker arsenic* deposits at K Timo, ibid p. 20.

[360] Implementation of the Environmental Protection Act (1990), the UK government has begun to introduce it in form of IPC. However, there were indications suggesting that it will operate in a different way from that first envisaged by the Royal Commission on Environmental Pollution, "an august body which first mooted the idea of IPC in the 1970s". See Jordan, Andrew. "Integrated pollution control and the evolving style and structure of environmental regulation in the UK." *Environmental Politics* 2.3 (1993): 405-427.

ordinated approach to environmental challenges.[361] There is no such similar process or legislation within the African Union or Nigeria to carter for these challenges oil exploration activities. Alder J and Wilkinson D[362] noted that English Traditional approach to environmental challenges centres prominently on treating the environmental media of land, air and water separately. They submitted, 'a given discharge[363]' can affect more than one medium as a restriction on a discharge into one will create pressure to discharge into another. The IPC was created to holistically seek solution that concentrates on the process in relationship between the three media. There is no similar body or legislations in Nigeria which seeks for a holistic measure for environmental clean-up from oil pollution.

Environment has a natural assimilative capacity to degrade and render harmless certain levels of pollution. Some have argued that environmental degradation does not in all conditions constitute pollution.[364] They hold that except when it has adverse effects on human existence. When it does, it affects human health and his happiness before it constitutes pollution.[365] The writer does not believe in this opinion because in developing nations, ignorance and illiteracy elicit wrong approach or attitudes to environmental good practices. They will not be able to note the 'dos and don'ts' with their various 'mix and match' environmental rules. There will be problems of knowing what type of degradation that constitutes less environmental challenges and that with higher propensity. There has not been any cushion effects as a result of lack of awareness, illiteracy and technical know-how in countries like Nigeria. They lack pedigree to note when their health or happiness are being affected by environmental degradation and could only realize when the impacts must have adversely devastated them.[366]

Prior to a cohesive set of environmental legislations and international treaties, one may be wondering how did the world kept the ravages of environmental pollutions from degrading the quality of the land, air, water and the entire human race - ecosystem. Kubasek and

[361] See EC treaty Artiscle 3c.

[362] J Alder and D. Wilkinson, *Environmental Law and Ethics,* Macmillan Press Ltd London (1999) pp. 192 – 193.

[363] This could be oil pollution, gas flaring or pipeline leakages.

[364] Alder and Wilkinson ibid.

[365] See again Alder and Wilkinson ibid at p. 197.

[366] Note that prior to 1988 Koko toxic waste dump, Nigeria had always responded to most environmental issues on an ad hoc starting point. The discovery of toxic waste dumped in Koko, at remote part of the present Delta State of southern Nigeria attracted media and public outcry which prompted the government to react promptly. It was through a diplomatic channel that Nigerian succeeded in getting the Italian government and the Italian company that was the culprit to lift the toxic waste out of the country.

Silverman[367] attempted to elucidate the question by opining that there was none without protective legislations. The environment and ecosystem will be unfit and the valuable land will be eroded. They submitted that the cost of cleaning up past mistakes from the era of minimal regulation is yet to be over particularly in the USA.[368] US had since raised their awareness and research skill to environmental regulatory and measures to combat man's explorative activities on earth and its negative impacts in order to eliminate externalities.[369]

The proponents of environmental perspective believe that often, some important decisions that effects environment are made by taking into account only short-term impacts. The view stated further that their economic factors will have little or no concern on the ongoing or expected maintenance or enhancement of the viability of global ecosystems.[370] More so, some other scholars had argued that government needs to step up in imposing the costs of pollution to the polluting firms which will increase the product prices to reflect the true cost of production. In this instances, if the producer must pay to properly dispose of the hazardous waste they create, citizens who would otherwise been adversely affected by the producer's improper disposal will not have to pay. They should include loses to their health[371] and environment especially the land and means of livelihood. Nations without strong legislations and policies to improve on waste management suffer sudden disasters. The researcher concludes that the poor waste disposal and lack of control of pollution from petroleum activities in Nigeria[372] have serious economic and health impacts.

2.6 CONCLUSION

The chapter identified some efforts, lapses and failures in Nigeria laws, policies and previous literatures. Laws are made as rules and not as a political mechanism for the society. It found that previous literatures had relied on political approach on the subject. These affected other related areas of Nigeria laws on ownership of land and mineral control, compulsory acquisition trends, compensation and environmental administration. The mineral ownership and implications of oil exploration in Nigeria are poorly taken care by these laws.

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[367] See N. K. Kubasek and G. S. Silverman, *Environmental Law* (Pearson Prentice Hall USA 5th ed.) at (2004) p 127

[368] The experience of Gulf of Mexico is one of the most recent of this pollution.

[369] Pollution has been defined as an externality. See Kubasek and Silverman ibid at p 129.

[370] Kubasek ibid pp 129 - 130

[371] See Kubasek ibid particularly at p 129

[372] Niger Delta Nigeria has witnessed this over decades.

Definitions of land and mineral resources have shown that both creatures are capable of being owned or held as a right by both individual and government. These issues appear to be inadequately procured by Nigeria laws. The provisions and administrative approach do not conform to the international best practices because when land is acquired for petroleum exploration or other public interests, that land is lost forever. The land texture, its fertility and life is almost gone in Niger Delta Nigeria due to oil activities. It can no longer be used for farming, fishing or habitation in most cases. There are skeletal literatures supporting the novel unification proposal of land and minerals by the researcher in Nigeria. However, the researcher has taken leaves from US and Canada to examine the importance of change in Nigeria present legal regime. As one of the major oil and gas suppliers and richest in Africa, Nigeria needs to overhaul her land, mineral and environmental laws.

The choice for doctrinal approach is important because Nigeria land, minerals and environmental laws were systematically examined in this research. There were comparisons of these laws and practices of private and government control of land and mineral resources between Nigeria and other jurisdictions. Ohio Dormant Act, Alaska Act, and some judicial decisions were productive and supportive of private land and mineral ownership. Patricia Marchant's work and *quidquid* common law principle could be extended by implication to consider minerals as fixtures of land that could be subject of ownership by the occupier. Some countries have liberalised land and mineral rights but many are nationalising land and minerals. Human rights need to cover mineral and land. Passage of PIB and application of Content Act is desirous. These legislations if passed and enforced will augment the contest of private ownership and local communities' participation in oil management in Nigeria. Some nations have maintained their environment from oil pollution through legislations and best practices which is absence in Nigeria. Doctrinal research gave the writer good knowledge of various laws and practices of many countries on issue of land, mineral and environment which require adoption and application in Nigeria.

CHAPTER THREE

PROPERTY RIGHTS, ALIENATION OF INTERESTS AND LAND LAW IN NIGERIA

3.1 INTRODUCTION

The Nigeria Land Use Act 1978 (LUA) has provoked contentious legal controversies over property rights and alienation of interests in land. The seeming issue came when the Act took land away from the traditional customary owners. Historically, Nigeria has three different backgrounds to landownership system. Prior to the coming of her colonialists, southern Nigeria was administering land in accordance with its customary laws while there was Islamic law in the north. The arrival of the colonialist changed the administration of land.[373] Thus, land became subject of public acquisition for overriding purposes[374] by government. The third regime was current era of nationalisation of Nigeria land with promulgation of LUA.[375] The Act has two main factors. The first was to correct the diversity of customary laws on land tenure and the difficulty of their application. Second factor was the rampant practice of fraudulent sales of land in southern Nigeria. It distinguished urban and rural area land.[376] In urban areas, it empowers Governor of the state to take charge of land while local council chairman administers the rural land. A basic premise of this chapter is to examine how land could be effectively used by Nigerians and to give an improvement in its management. This is because land is acclaimed second most vital need in the hierarchy of man's wants[377] in Nigeria.

The decision-making body is responsible for any legislative approach to fully understand the nature and factors impinging upon land resource management in Nigeria.[378] Land Law in Nigeria is a complex subject, if not difficult. However, it is interesting and important because it is relatively new development from the previous practices and tenure system in Nigeria.[379] Since LUA was decreed, there have been many literatures, a multiplying output of legal scholarship and other valuable contributions. All these were at best fumbling uncertainly in search of real meaning, significance and scope of the LUA provisions in

[373] Public Land Acquisition Act of Nigeria 1917.

[374] See Land Ordinance, Statute of General Application 1900 was applicable to Nigeria through Public Land Acquisition Act of Nigeria 1917 which was a colonial compulsory acquisition legislation that replaced the Public Lands Ordinance of 1903.

[375] See s 1 of LUA.

[376] Ss 34 and 36 ibid.

[377] Peter Ogedengbe,"Compulsory acquisition of oil exploration fields in Delta State, Nigeria: The compensation problem," Journal of Property Investment & Finance Vol. 25 No. 1 (Obafemi Awolowo University, Ile-Ife, Nigeria, 2007) Pp. 62-72.

[378] S. Famoriyo, "Administration of land allocation in Nigeria", Volume 1, Issue 3, (July 1984), Pp 217-224.

[379] I. A. Umezulike, *ABC of Contemporary Land Law in Nigeria* (Revised and Enlarged Edition), Snap Press Nigeria Ltd Enugu (2013) pp 1 and 2.

relations to existing interests in land in Nigeria. The question is on ideological status of the legislations rather than its intended utility or social justice objective.[380] Judicial decisions are desirable but they are not usually determinative of academic analysis and conclusions. The research is studying the failure of institutional land policy measures in Nigeria which can be attributed to a lack of proper legislation, study and conceptualization or understanding the past factors and how the system could be revolutionised.

In rural areas, control of land falls under the appropriate local government area council of the place by s 6 and s 36 of the Land Use Act. But ownership or relationship between mineral resources and land was not conceived or considered nor natural resources considered part of the land. This took a different dimension in other jurisdiction.[381] Thus, law permits local government council to manage land in rural areas and states government in urban areas.[382] The research will examine if it is legal that such position should be considered for mineral resources administration or that both should be managed together to promote the principle of federal system. Note that the Act envisages rights of occupancy to replace all previous tenure system or rules of inheritance to land. This forms the basis upon which land is held under the new legal era. But statutory and customary rights of occupancy appear as mere decoration on art of the law. By this, occupiers are only permitted to hold land and not to own it. They do not have control over its environs either.

Generally, Nigerians heavily depends on land and its resources for survival. It is not an overstatement to say that without land there would be no human existence.[383] This is because man gets items essential for his continued existence such as food, fuel, clothing, shelter, medication among others from land. This important segment part of land to man and the society propels the government's intrusion into land legislation. This may be to ensure adequate and efficient land management for the benefits of the members of the society.[384] As Nigerian laws vest all the natural resources in the State, the implication of this is that the state has right to own and receive oil revenue in form of rents, taxes, and

[380] I. A. Umezulike ibid.

[381] See LPA S 205 supra

[382] Here, Land Use and Allocation Committees", appointed for each state by the Governor, were to advise on the administration of land in urban areas. "Land Allocation Advisory Committees were to exercise equivalent functions with regard to rural land. S 51(2) of LUA takes care of federal land.

[383] Akintunde Kabir Otubu**, '**Land Reforms and the Future of Land Use Act in Nigeria', Nigerian Current Law Review. (NIALS) (2007 – 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1123948 Accessed 18/05/2016.

[384] See s 1 of the Land Use Act 1978 which gives the entire land of the land to the governor to hold on trust for the benefits of all citizenry of Nigeria.

royalties.[385] State monthly allocates funds for federal, states and local governments' infrastructural developments. The LUA has been interpreted to be denying Nigerians rights to land and adequate compensation from compulsory acquisitions especially for oil exploitation.[386] This chapter is studying what underpins land developments, implications of constitutional provisions on property rights and powers of the Governor under the Act. The chapter aims to make presentation of factors operating within the decision-making process in relation to land use in Nigeria. It will analyse the relevant provisions of the LUA, CFRN and concludes on its overall impacts in Nigeria.

3.2 LAND USE ACT AND IMPLICATIONS OF CONSTITUTIONAL PROVISIONS ON LAND RIGHTS AND OWNERSHIP IN NIGERIA

Land rights were limited if not denied on the inception of the 1978 decree.[387] It is conceived as the most controversial legislation the Nigeria has experienced since her independence. It was originally promulgated as military decree and later annexed to the constitution.[388] LUA was made to nationalize landholding system in Nigeria. The peculiar impacts of this Act on the issue of petroleum exploration, mining and inhabitants of the Niger Delta region have led to the assertions that the Act was "made distinctively to deprive inhabitants their rights from actively participating in land or oil management".[389] One can argue that the Act obstructs citizenry rights to pursue enforcement of s.43 of the constitution.[390] Ostensibly, this may be one of the fundamental causes of the conflicts and litigations[391] pervading Niger Delta region Nigeria since oil exploration began.

The said s 43 provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. S 1 of the Act states: "Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby

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[385] See generally s 162 of the Nigeria constitution 1999. This will be discussed in the next chapter.

[386] Kaniye S.A. Ebeku, "Oil and the Niger Delta People: The Injustice of the Land Use Act", *Law and Politics in Africa, Asia and Latin America* Vol. 35, No. 2 (2. Quarterly 2002), pp. 201-231

[387] See Land Use Decree No. 6 of 1978.

[388] See Constitution s 315. This makes any amendment more rigorous and burdensome under s.9 CFRN.

[389] See SS 1, 28 and 31 supra. The impact of the Act undermines the rights of inhabitants to access justice both on the land, oil or mining ownership and control.

[390] See again s 43 CFRN.

[391] Issues of Ogoni men Abacha executed on November 10, 1995 was on ownership and control of oil too and which has affected onshore oil production in Ogoniland of Niger Delta. See also Ako Rhuks, "Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice", Journal of African Law, vol. 53, Issue 02, (2009), pp 289-304 and Frynas, Jedrzej Georg. *Oil in Nigeria: Conflict and litigation between oil companies and village communities*. Vol. 1. LIT Verlag Münster, (2000). See *Nkwocha supra* and *Administrator of Estate of Abacha v. Eke-Spiff* (2003) 1 NWLR (Pt. 800)114 on the nature of forceful of land acquisition in Nigeria and personal enrichment of private land by compulsory acquisition provisions.

vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act". Though, the Act was meant to usher in new land reform, it has turned clog in the wheel of the citizenry's interests. This was orchestrated by the military government to ensure it was embedded in the national constitution. The state legislature has not right to amend or review its provisions. Any attempt to rectify its inadequacies requires a constitutional amendment.[392] The Federal Government has constituted a Presidential Technical Committee on April 2, 2009 to undertake a reform of the land tenure in Nigeria following various problems and quests emanating from the Act.[393] The committee report was not made public or presented to National Assembly for ratification after many years.

Statutory right of occupancy is to be granted by the Governor and related principally to urban areas. Customary right of occupancy accordingly,[394] means the right of a person or community lawfully using or occupying land in accordance with customary law before1978. It includes a customary right of occupancy granted by Local Government under this Act.[395] S.6(3) authorizes the local government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction and to revoke any customary right of occupancy on any such land. The approval of the local government was to be required for the holder of a customary right of occupancy to alienate that right.[396] Why this was not considered along with mineral oils is yet to be established under the present laws.[397] If oil is found within an area, how could this be reconciled legally under the law? Also, which law takes prominence as LUA is fused in the Constitution by s 315? Apparently, this contradicts s 44 (3) of the law.

The Act interacts with Petroleum Act,'[398] that vests the entire property in mineral oils to the federation. This gives federal government absolute right and control over the minerals on the land. The exclusion clause helps government to farm out oil mining rights to oil

[392] See s 9 (3) CFRN on the rigorous amendment procedures of the law.

[393] Akin L. Mabogunje, *Land Reform In Nigeria: Progress, Problems & Prospects* Seehttp://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/mabogunje.pdf accessed on 20/06/2014.

[394] See ss 34 and 36 of the Land Use Act in respect to Transitional provisions on land in urban areas and Transitional provisions on land not in urban areas.It appears s.9 CFRN overrides S.6(1) of the Act.

[395] See s 36 of Land Use Act. Particularly, see s.6(1) (a-b) of the Act.

[396] See generally ss 5 and 6 of the LUA on power of the governor to grant statutory rights of occupancy in relation to land in urban area and power local government in relation to land not in urban areas.

[397] Oil and gas and other mineral resources

[398] Kaniye Ebeku, ibid.

companies, rescinds[399] and receives rents and royalties from them with landowners interfering. The Act vests all the lands within the territory of a state of the federation in the governor of the state in 'trust' for all Nigerians. It severs the radical title to land from the indigenous inhabitants and gives that to the Governor. It led to the perceived injustices against the people where these mineral are being exploited. Ebeku has examined the impacts the Act has created on the people of the region. The erosion of the powers of traditional authorities has led to chaos in these communities; and loss of the right of compensations for the intrinsic value of land rather than merely surface rights. Ebeku[400] stated further that prior to the enactment of the LUA; holders of land in the Niger-Delta enjoyed three levels of compensations in respect to access to land for the petroleum activities. The failure of the Act to achieve its intended has negative impacts on the national legal establishment of land tenure system and oil regime in Nigeria. These restiveness and calamitous legal struggles affect the expected rise of GDP,[401] of oil production in Nigeria. The three benefits they previously enjoyed include;

i. payment of annual rent as the head lord for the intrinsic value of the land;
ii. payment of compensation for surface rights in case of damage to crops and economic trees; and
iii. payment of compensation for pollution where occur.[402]

Alison Clarke has noted that there are some veritable characteristics of land rights which distinguish its rights and ownerships from other forms of proprietary rights especially in the developing nations. These include that:

i. Its right is usually subjected to customary regulations;
ii. It confers on the holder with prime power to use it;
iii. It enshrines in the holder with control over it and make decisions on it;
iv. It confers on the holder with powers to transfer its powers or rights to sale etc;
v. It is determinable
vi. It is inheritable from the first benefactors to their heirs;
vii. It is taxable
viii. It is inalienable. [403]

[399] *South Atlantic petroleum ltd v minister of petroleum resources (2013) LPELR 21892 (2013) SC (Pt.ii) 46*
[400] Kaniye Ebeku, ibid.
[401] Gross Domestic Product of Nigeria. This is the case of Nigeria and her minerals.
[402] Kaniye Ebeku, ibid.
[403] Alison Clarke ibid. Land Use Act provides similar provisos in ss 6 and 36.

When these rights are abridged through compulsory acquisition, holders of such rights lose them. This has impacts in their present and future existence as their children yet unborn will also lose their inheritable rights to enjoy such inalienable rights especially when the acquisition is for petroleum purposes or serious governmental development. This may make such acquired land non-inheritable or habitable even after the projects because of the impacts such may create on that parcel of land. The parcel of the land may turn to terrible dam or dangerous site and thus, not habitable.

By this Act, the entire land in each state of the federation is handed over to the governor of that state and same applies to minerals to federation. By Nigeria context, private ownership of land is recognized and authorized by the constitution.[404] This could be seen where the relevant law and custom of that place permits. Also, where there is a legal estate transfer, through an irrevocable of power of attorney or deed of assignment. It is recognized where the division of family-owned land is evident.[405] This normally signifies to an end to a communal or family landownership. There is no private ownership of mineral rights whatsoever in Nigeria. CFRN s 44(3) maintains that the entire property in all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly. The existence and application of old English laws are still seen in areas where customary property law is not applicable.[406] The provision that vests all the land in the state governor of each state for trust and to be administered for the use and benefits of all citizens of Nigeria could override it.

S 5 (1) (a), clearly opines: "it shall be lawful for the Governor in respect of land, whether or not in an urban areas to grant statutory rights of occupancy to any person for all purposes…"[407] S 22 concludes that a holder of a statutory right of occupancy granted by the Governor shall not alienate his right of occupancy or any part thereof by assignment, mortgage, and transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained. By this proviso, the entire land in a state belongs to

[404] CFRN s 43 provides, "Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".

[405] N. O. Adedipe, et al *CBPR (Community-based participatory research) Database* – Nigeria Centre for International Environmental Law, (2006) p 1.
http://www.ciel.org/Publications/CBPR_Nigeria_9-18-06.pdf accessed 20/4/2014.

[406] Like in the Western Nigeria particularly in Lagos State. See the Property and Conveyancing Law (Western Region, (1959).

[407] The underlined needs to be noted

the governor including the 'land housing mineral oils' and the revocation includes for purposes of mineral exploration.[408] This law did not out-rightly authorize the federal government to revoke or compulsorily acquire land for any purpose except federal land under s.51(2) of the Act. S 28 of the Act authorises[409] the governor to compulsorily acquire land for public overriding interests. Our greatest concern is to understand the legitimacy of revocation under s 28 (2) (b)-(c)[410] and who it behoves when mineral is involved.

This section of the Act has never been implemented particularly the second limb of acquiring and reallocating to federal. The federal government has never been seen seeking for such application or implementation of the Act. This is due to the central control of the mineral resources pursuant to the constitution s 44(3). The abuse and non-observance of this subsection has adversely affected full enforcement of s.29 regarding compensation. According to this section, upon acquisition or revocation, the holder of Certificate of Occupancy whether statuary or customary, the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same. The transfer of this responsibility erodes the right of enforcement and this is one of the major causes of struggle of land and oil exploration compensation conflicts[411] presently seen in Niger Delta region and other zones of mineral exploration. No law in Nigeria today quantifies compensation for such revocations.

LUA seems to be obscuring with the 1999 constitution in different ways. Firstly, s.43 CFRN authorizes citizens of Nigeria with right to own immovable property anywhere in Nigeria. S.1 LUA gives the entire state land to the governor and by s.28 authorises him to compulsorily acquire it for public aims even though s.315 annexed the Act to the

[408] See generally Section 28 of LUA regarding land revocation and acquisition.

[409] S 28 (1) concisely put it thus*; it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.* Note further that s 44 (1) (a) and (b) failed also to state who to revoke at federal level outside the aforesaid proviso authorizing state governor to revoke for overriding public aims.

[410] It provides: that "the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation and the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith". Although, this responsibility is duplicated by Mineral and Mining Act where it slimly states, "All lands in which minerals have been found in commercial quantities shall from the commencement of the Act be acquired by the Federal Government in accordance with the Land Use Act". Note the underlined however, both laws are in variance.

[411] Where otherwise, s 29 (3) (a-c) says; if the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid; (a) to the community; or (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or and, (c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community. This mixture makes the Act more burdensome and vague as this directive is hardly witnessed across the country.

constitution. But s.29 that provides for compensation failed in its modality for to compute its quantum. This mixed-up makes its enforcement hard considering the enormity of impacts of land used for oil purposes or mining creates on citizenry[412] and human environment. The Act failed to consider compulsory acquisition of land for oil exploration in a great extent. This contributes to the country overtime belligerence since neither the Petroleum Act was comprehensive on the issue or the CFRN. Clarke has contended that communal property is a viable alternative to private or state ownership model.[413] The author concluded that often, "it works better than either".[414] In her work, she acknowledged that Ostrom was among the first to propose such hypothesis back in 1980s.[415] Though the author's opinion is significant to development and communal existence but, private property rights is beauty of democratic dispensation under a federal system like Nigeria. It appears that the Nigeria exclusive ownership model frustrates its developmental stability.

It follows that the highest interest a person can acquire on a land under Nigeria legal system is mere "Right of Occupancy" whether customary or statutory and nothing more. The radical or absolute ownership is vested on the governor[416] while mineral resources are entirely the property of federal government.[417] The implication of *Nkwocha v Governor Anambra State*[418] is that no one has right of ownership to land and in extension, its natural endowments by s.44(3). The *Nkwocha's* case was where plaintiff instituted an action against the defendant (Governor) for a declaration that the defendant lacked the right or competence to revoke his leasehold. In the instant case, the trial court held that the plaintiff failed to make out a case on the merit. On appeal, the question relates to the above issue was raised. The Nigeria Supreme Court held that the Land Use Act is an existing law when the constitution came into force and one which moved as a Federal enactment and also that the powers of the Military government (now state Governor) under the Land Use Act is vested, by s 276 of the constitution (now s 315), in the state government is the same.

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[412] Compulsory acquisition of land may be for the aim of oil exploration and other industrial or public overriding interests. The effects of these may be so devastating to human and his environs which this section failed to consider. See s.34 on transitional provisions on land in urban areas, s.35 on compensation for improvements in certain cases and 36 in respect to transitional provisions on land not in urban areas.

[413] Alison Clarke. "How Property Works: The Complex World View." *Nottingham Law Journal* 22 (2013) p 143.

[414] Alison Clarke ibid.

[415] Alison Clarke, (2013) ibid p 143. See also CFRN s 43 which supports private property right.

[416] See again s 1(1) of the LUA 1978. See also Kayode Esho JSC (as he then was) in *Nkwocha v Governor of Anambra State* (1984)1 SC NLR 634.

[417] See again *AG Federation v AG Abia State & 35 Ors.*

[418] *AG Federation v AG Abia State & 35 Ors supra*

The LUA tries to address four key issues arising from the formal land tenure system:

a. the problem of lack of uniformity in the laws governing land use and ownership,
b. the issues of uncontrolled speculation in the urban land,
c. the question of assets to land rights by Nigerians of equal basis and
d. issues of fragmentations of rural lands arising from either application of traditional principles of inheritance or population growth and consequent treasure on land.

The Land Use Act approached the above proprietary right issues in three related strategies.

i) Investing of proprietary rights in the state.[419]
ii) Granting of usufractuary rights of land in individual.[420]
iii) The use of administrative system other than market forces to the allocation of land.[421]

The primary ambition of the Act was to neutralize all traditional huddles to land under customary laws and make land available for petroleum, agricultural, industrial activities or other developments. Conjecturally, law makes all land and minerals in country government property.[422] This includes the off-shore zones resources, the territorial water zones or exclusive economic zone.[423] There seems to be more confusion than solution when one tries to marry both laws. One justification for the Act as noted above was to nationalise customary land tenure system held to be constraint on agriculture, split mineral from landownership and allow it for industrial development including solid and oil mineral exploration. Land and its resources are natural endowments enjoyed by man. Thus, mineral resources are constituents of land and need not be held separately.[424] Systematic analysis of the legal and political conditions which previously governed ownership and control of land indicates that the system tenure functioned as equitable and stable means of regulating access to land. Presumptions about the defects of such customary tenure are shown to arise from fundamental misconceptions about the nature and operation of customary law on land and mineral ownership.

[419] See again *Nkwocha's case supra*
[420] Land Use Act ss 9, 10 and 14.
[421] Land Use Act s 4
[422] S 1 supra
[423]See Supreme Court of Nigeria in *AG of Federation v AG Abia State and 35 Ors (supra).*
[424] Therefore, it is not a hyperbolic to say that without land, there would be no human, flora and fauna and the globe will be formless with great drought and famine. Note that oil and gas exploration have not developed as it is today in Nigeria in 1978 and the nation had earlier as stated above relied totally in agricultural produce for her GDP.

The Decree was ambiguous in key issues like its implications for the continued validity of rural tenures, introduction of considerable confusion and uncertainty of land rights. In particular, tenancy became insecure with the deterioration of relationships between landowners and tenants especially since oil was discovered. The absence of effective structures for land administration, the impact of the Decree was slight due to ignorance[425] and high level of illiteracy in the country. This same position is been felt in respect to Constitution, Petroleum Act[426] and Mineral Act leading to their poor enforcements. The provisions of the rephrased military decree termed 'the Nigeria Constitution 1999' also lacks legislative enhancement or public opinions. Its implications may be responsible for continued debate for its amendment in the National Assembly. "Those who subscribe to this school of thought believe that; as a product of the military anarchy, the constitution as it is will always have an uphill task to sit-in with tenets of democracy"[427] without repeal.

The legislation did nothing to rationalise any of the supposed defects of customary tenure on mineral resources. It is therefore right to conclude that conception of petroleum management in Nigeria appears defective which needs urgent revisit. This is to bring out in it the rights the local government and state governments have under LUA over land to include mineral resources. This is because land should not be separated from its natural resources. This appears like taking a child away from her mother. Omotola stated that, "every person requires land for his support, preservation and self-actualization within the general ideals of the society. Land is the foundation of shelter, food and employment". This position is convincing and the provisos in Land Use Act were rephrased in 1999 Constitution by s 44 (3). The position was now in respect to ownership, acquisition and control of natural resources in its entirety in Nigeria.[428] This gives total control of all minerals to national government while lands are to be owned by the governor of each state.

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[425] Paul Francis, 'Land Nationalisation and Rural Land Tenure in Southwest Nigeria', http://www.ilri.org/InfoServ/Webpub/fulldocs/Bulletin24/Land.htm visited on 5th June, 2014.

[426] Petroleum Act No 51 of 1969.

[427] See Agbelese D., 'Senate Shifts PIB Hearing / Excerpts From House Of Reps Hearing' (on July 11, 2013), via, http://www.petroleumindustrybill.com/tag/constitutional-amendments/#.VuXDtzZFAdU accessed 16/1/2016; *Nigeria Constitution Amendment Bill, Senate Committee Report* published on June 6, 2013 by Online Premium Times, via, http://www.premiumtimesng.com/resources/137819-download-nigeria-constitution-amendment-bill-senate-committee-report.html accessed on 20/2/2016 and F. Okoye, 'Nigeria: Senate and Constitutional Amendment - the Real Issues', published on 1 April 2010 via http://allafrica.com/stories/201004020367.html, accessed on 25/2/2016.

[428] See s 44 (3).

This has attracted countless legal and social criticisms, debates, crisis and litigations[429] over the years between states, local communities of the Niger Region and federal government.

Before promulgation of land use decree (now LUA), administration of land by native law and customs appears equitable and just. The land tenure system of the southern part of Nigeria was run distinct from the system operational in the north. This was based on various systems of customary laws. Basically, private landownership existed as families and communities had control of their lands. The implication of s 1 Petroleum Act 1969[430] was that oil is vested in the State the land from which it is being exploited is vested family, community or state's land. Previously, oil multinational companies, which had obtained appropriate mining license under this Act or Oil Pipeline Act 1990,[431] were obliged to approach the owners of the lands involved, in order to gain access into the land. In this way, the customary landowners participated to a great extent in the management of oil resource as they were usually paid benefits as annual rent for granting access of their land for these activities.

The landowners were usually paid compensation for any damage occasioned to the land as stated in s 29 LUA and ss.19 – 22 Oil Pipeline Act. The damages may result from the oil activities or other industrial uses. It comprised damages that may come to their crops or other property, human or land. On inception of the LUA, it initiated a new model of real property law, today called the Land Use Act.[432] The law extended the existing position in the northern region and nationalized all land in the country.[433] The Act now divests all the customary right and ownership of land or its original title. The consequence of this is that oil companies no longer approach the private landowners or communities for a right of access of their land since they have lost the proprietary right in perpetuity to the state. The companies now go through the government who will now revoke the land and re-allocate to oil companies pursuant to s 28 of the Act, but definitely not state government.

[429] See Littoral States' case decision of *AG Federation v AG Abia State and 35 Ors*. See also s 44 of the 1999 constitution. Activities of the militancy in the Niger Delta are still seen as aftermath of these laws.
[430] See also ss 2 and 4 of the Act with respect to who should give licenses and control the products.
[431] See ss 7 – 19 OPA 1990.
[432] The Decree was promulgated by the military government, and it is now part of the Nigerian constitution. See s 315 and decision in *Nkwocha v Governor Anambra State* op cit.
[433] See s 1 of the Act

3.3 LAND USE ACT AND CUSTOMARY LAND RIGHTS IN NIGERIA

The LUA s 36 (2) provides, "Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall if that land was on the commencement of this Act being used for agricultural purposes continue to be entitled to possession of the land..." Considering property and proprietary interests, Alison Clarke has noted that, "It follows from the principle of general enforceability that, if my right in a thing is to be a property right, it must be possible to identify the thing in question. Because a property right in a thing is enforceable against everyone who comes into contact with the thing, it must be possible to identify whether or not any particular thing has become burdened in this way".[434] Again, the author acknowledged that some communal property rights and interests are not alienable unlike non-proprietary right.

This customary practice is immutable in Africa especially in Nigeria. Where a community is consists of a "fluctuating body of individuals, no one individual can alienate her own interest. Generally, the community as a whole cannot alienate its communal interests either".[435] As stated earlier, the enforcement of this section appears weak and selective though the constitution makes all mineral resources property of the federation. The local communities and families have adopted the practice of alienating their land against this background for non-mineral miners without government's consent. The enforcement of the provision is relatively on oil minerals. Apparently, confusion emanates from the divergences between the Act and the constitution.[436] S.36 of the Act considers agricultural activities and land allowed to lie fallow for purposes of recuperation of the soil.

These corporeal rights have exception under the Nigeria LUA s.28 even though, the holder or occupier is by the law[437] entitled to the enjoyment of his rights. It provides, "It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest".[438] This power is all-inclusive and absolute but revocation must be for overriding public interest.[439] In course of time, two categories of estates, freehold and leasehold emerged.

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[434] Ibid at p 156.
[435] Ibid p. 158
[436] In particular, s 1 of Land Use and s 44(3) of the constitution. The former gives all land to the Governor while the later gives all mineral to the federation.
[437] The Land Use Act supra, see ss 9, 34 and 36.
[438] See s 28 (1).
[439] *LSDPC v Foreign Finance Corporation* (1987) 1 NWLR (Pt.50) 413. See the *Administrators/Executors of the Estate of Gen. Sani Abacha (Deceased) v Samuel David Eke-Spiff & Ors* supra. See also s 28 (1) ibid; See the West Indian court decision in *Campbell v Crooks* (1960) 2 IWLR 65, 69 where it was held that what was conveyed was a life estate and not a fee simple; the reversion remaining is vested in the settlor. This is similar with certificate of occupancy of Nigeria but, the law limited it to 99 years. However, no such land has reverted to the Governor even though Land Use Act is less than a century.

The second type basically concerns with the relationship between landlord and tenant of the present era. The first category of freehold is the fee simple absolute estate of eternity in perpetuity. In *Alli v Ikusabella*[440], it was affirmed as the largest estate theoretically possible in land. In Ghana, it is the highest estate or interest an owner can hold in land.[441] Under the Land Ordinance of Tanzania (Tanganyika),[442] the whole land of Tanzania whether occupied or unoccupied was declared public land. Freehold land was extinguished by Freehold Titles Conversion Act[443] by 1st July 1963 making the ownership of the whole land of Tanzania public.

In *Abacha v Eke-Spiff*, the case was in respect of a property formerly allocated to the Plaintiff/Respondent and backed by a right of occupancy issued by the Rivers State under Land Use Decree (now Act). This was revoked and re-allocated to the 3rd Defendant/Appellant, the then Head of State by the state government. The trial court held in favour of the Plaintiffs/Respondents (revoked certificate holder). The appeal was not permitted and on further appeal to the Nigeria Supreme Court was dismissed. The court reaffirmed the decision of the trial court that such revocation was inappropriate and void.

Pursuant to the treaty of cession to the Britain, King Dosunmu of Lagos transferred all relevant land rights to the British monarch.[444] However, the court has held in *Attorney General of Southern Nigeria v John Holts Ltd*[445] that it was only the radical titles to the land in Nigeria were transferred to the sovereign but the usufructory rights of the aborigines were all preserved. The court in *Tijani v Secretary of Southern Provinces*[446] similarly held that the legal effect of the treaty was that lands in the colonies ranked in *pari-passu*[447] with lands in Britain subject to the use and the occupation or possessory rights of the natives. Though, this supports the present legal regime but a critical assessment in John Holts Ltd decision has more pragmatic view and needs reconsideration

[440] *Alli v Ikusabella* (1985) 1 NWLR (pt. 4) 630, 640, per Karibi-Whyte (JSC)
[441] *Total Oil Product Ltd v Obeng* (1962) 1 GLR 228, 229 and *Addai v Bonsu* (1961) GLR 273 and a West Indian decision in *Noel v Noel* (1958-59) 1 WILR 300.
[442] Cap. 113 (Laws of Tanzania) 1975 s 3.
[443] Freehold Titles Conversion Act No. 24 1963.
[444] Uche Jack-Osimiri, G.A. Okpara, Z. Adango, Chima Jack-Osimiri, "Nature of Native Land Title & compensation for compulsory acquisition" [2006] NZYBKNZ Jur 13; (9 Yearbook of New Zealand Jurisprudence) (2006) 190
[445] *Attorney General of Southern Nigeria v John Holts Ltd* (1915) AC 599. Accessed via http://www.nzlii.org/nz/journals/NZYbkNZJur/2006/13.html 15/07/2016.
[446] (1921) 3 NLR 24.
[447] Meaning "Equal footing" that describes situations where two or more assets, securities, creditors or obligations are equally managed.

than leaving natives mere tenants of the state Governor. In a strictly language, the *allodia*[448] title belonging to the natives were transferred to the Crown in this way.

The doctrine of freehold tenure emerged, making the crown the ultimate owner of all land while his subjects[7] were granted land in exchange for the performance of services to the imperial monarch. This type of feudal pyramid of landholding saw the crown at the apex, the lords at the intermediate level, and the tenants as the lowest occupiers.[449] This made the monarch the paramount title[450] holder. The approach was an obsolete practice under common law and does not fit into democratic federal system. Lands and its rights need liberalization under the present day development. Individuals presently could no longer, in a general sense of it, own land.[451] All Government leases[452] and any other land interests were converted to a Right of Occupancy. While the Tanzanian Land Act vests all land in the president for the use and benefit of Tanzanian people, the Nigerian Land Use Act s 1 vests all the land in the state Governor of each State. Despite land maladministration in Nigeria, the Governor is not the beneficial owner[453] but holds the land in trust and administers the same for the benefit of all Nigerians.[454]

Inalienable private property rights are creation of legislation.[455] In Nigeria, the Land Use Act empowers the Governor in case of an urban area to issue statutory certificate of occupancy and the Local Government Chairmen to issue customary rights of occupancy in rural areas.[456] Clarke noted that these are essentially status rights attributable to the holder. There are "rights that the holder holds personally, by virtue of a unique status he has, and which cannot be transmitted to anyone else because the status is personal to him". It must be noted that these right can be revoked in Nigeria by the state Governor pursuant to s 28 of the Act. Clarke noted that alienability of property right is an essential characteristic of a property interest as Lord Wilberforce held in *National Provincial Bank v Ainsworth*.[457] The

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[448] Latin legal principle that lands held in absolute ownership is free from such obligations as rent or services due to an overlord.

[449] Alston, Bennion, Slatter, Thomas & Toomey, *Guide to New Zealand Land Law* 2nd Ed (2000) Pp 14 - 19.

[450] Colonial administration converted land into Conventional freehold estates. See Land Registry Ordinance No. 15 (1923 Tanganyika) s.7 (1) repealed by Land Registration Ordinance (Tanzania), 1975 s.115 (1).

[451] Gondwe, Z.S. (Dr.) *Manual of Transfer of Right of Occupancy in Tanzania* (2001) 3-20 cite in U. Jack-Osmiri et al ibid.

[452] This is done through certificate of occupancy under the Land Use Act s 9.

[453] *Savannah Bank Ltd v Ajilo* (1989) 1 NWLR (pt. 97) 305, 309 (SCN). See generally s 1 of LUA.

[454] *Abioye vYakubu* (1991) 1 NWLR (pt. 190) 130, 256 (SCN).

[455] See Alison Clarke ibid p 158.

[456] See s 9, 34, 36 of the Act.

[457] *National Provincial Bank v Ainsworth* [1965] AC 1175. See also Blackburn J in *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141 cited by Clarke ibid at p 158. The decision noted that the Crown had the power to

author held this view incorrect in some respects. She included the exception in communal property. In supporting Clarke's opinion, it was sacrilegious for any community in Nigeria to alienate her land perpetually for whatsoever reason. The researcher has found out that in Nigeria today practice, community alienates her communal lands for solid mineral extraction or for other purposes even without the consent of the state government.

The LUA nationalized all lands in Nigeria,[458] yet, it appears that the enforcement of Nigeria land law is weak if not selective. Note that the imminent theory of the inalienability of land in the present day Nigeria indigenous societies has given in a formulation of legal principle. This means that the family or communal land and its title is vested in the community as a whole.[459] Family or the community is the unit for the purpose of ownership of such title.[460] By certificate of occupancy dully issued under the Act, the holder of statutory tenancy has undeniably interests as tenant in possession. He has an interest enforceable against the whole world – but they are inherently inalienable.[461] Despite this statutory firmness, the Nigeria Supreme Court has denied such inalienability right in *Nkwocha v Governor Anambra State* supra. The court held the Governor's power as supreme[462] thus; the tenants are usually left with mercy of the Governor.

In *Nkwocha's case*, he instituted an action against state Governor for a declaration that the governor had no right or competence to revoke the leasehold enshrined in his statutory certificate of occupancy. The trial court held that he failed to make out a case on the merit. On appeal, the Nigeria Supreme Court held that the LUA is an existing law and that the powers of the Military government(now the Governor) under LUA is vested, by then s 276 of 1979 constitution. The court held governor's power as surpassing to that of his tenant. Conclusively, what was left in the Act was to consider customary rights over land along with corporeal, incorporeal hereditament and interest of mineral resources underneath. Compulsory acquisition needs to go through compulsory purchase where land occupiers will have stake and benefits of their land. It should also entitle them with damages.

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extinguish native title, if it existed. The issue of *terra nullius* (Latin phrase meaning no body's land used in international law), that came up in *Mabo v Queensland (No 2)* (1992) 175 CLR 1, was not contemplated in this decision. The decision in *Milirrpum v Nabalco* was later overruled by *Mgbo's case* by the High Court of Australia some years later.

[458] See *Nkwocha v Governor Anambra State of Nigeria* supra and *Mohammed v Lang* (2001) 3 NWLR (pt. 700) 389

[459] *Lewis v Bankole* (1909) 1 NLR. 82 at p. 104; *A.G. v Holt* (1910-1915) 2 NLR 1 at p. 3 and *Oloto v Dawodu* (1904) 1 NLR. 57.

[460] *Vanderpuye v Botchway* (1951) 13 WACA 164,168, (Per Karibi-Whyte, J.S.C. at P.13, paras. B-E).

[461] Ibid p 158

[462] See Land Use Act s 1 supra.

3.4 COMPULSORY ACQUISITION OF LAND, COMPENSATION AND POWERS OF STATE GOVERNOR

Nigeria state governor uses his discretion to control land. LUA s 28(1) and (2) (b) opines: it shall be lawful for the Governor of any state of Nigeria to revoke a right of occupancy for "overriding public interest". Overriding public interest in the case of statutory right of occupancy in states means the requirement of the land by the government of the State or Local Government or purposes of the Federation.' S 28 (3) (b) concludes that overriding public interest in the case of a customary right of occupancy means "the requirement of the land for mining purposes or oil pipelines or for any purpose connected…". It is argued that if the state or local governments can legally revoke any land right for 'public purpose,' nothing stops it from having control over what it revokes. This may include purposes of mineral exploration. It is submitted that *AG Federation v AG Abia State and 35 Ors* decision was reached *in percuria.* It needs a reversal to correct the lacuna created by its decision. This will consolidate true position of the law in line with the principles of true federalism as the present stand should not go *in perpetuum*. The Act provides the state governor and local government council chairman with explicit authority as discussed earlier.

The Public Lands Acquisition Act 1917 was the forerunner of compulsory acquisition and compensation in Nigeria. The Ordinance No. 17 was promulgated to empower the colonial governor to pull down buildings affected by street widening exercise in Lagos Island. The Public Lands Acquisition Ordinance[463] followed. This was a derivation of the English land clauses consolidation Act of 1845. Public Land Acquisition Act 1958,[464] s 2 gives the government the power to acquire land legally and compulsorily[465] for overriding public purposes while its s 15 deals with the principles of assessment of compensation.[466] Obi has asserted that, "land is a deity, the source of all life, of food and fertility, the custodian of social norms and morals. Both as god and as a legal person, some form of respect and tribute are due to mother earth".[467] This needs to be extended to its occupiers.

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[463] Known as the Public Lands Acquisition Act that replaced the Colonial Ordinance

[464] Cap 167 of 1958 (as amended).

[465] Emphasis mine. See s 28 supra.

[466] The section states: "No allowance shall be made on account of the land being acquired compulsorily. The compensation for lands, estate, interest or profit should be the amount if sold in the open market by a willing seller. Where only part of the lands, estate etc. is acquired; the court may take into account any enhancement of the value of the residue. A provision for the payment of compensation for loss of rent and profits be made".

[467] S. N. C. Obi p 30.

The position of the Act is same with Oil in Navigable Water Act and other related mineral laws. Nigeria Oil and Gas Industry Content Development Act of 2010 has not been given full force of implementation while the Proposed Petroleum Industry Bill as noted in the preceding chapter is been debated by the National Assembly for over 14 years. This has left the Nigeria land, oil and gas laws inchoate. The Oil Pipeline Act provides that license holder can enter into one's land for purposes of carrying his legal activities, S.15 (a – b) says:

> A licence shall not authorise any person to enter upon, take possession of or use any of the following lands unless the owners or occupiers or the persons in charge thereof have given their prior assent any land occupied by any burial ground or cemetery and any land containing any grave, grotto, area, tree or thing held to be sacred or the object of veneration.

S 20 (4) states "no compensation shall be awarded in respect of unoccupied land as defined in the Land Use Act, except to the extent and in the circumstances specified in that Act."[468] But, s.11 (5) (a – c) of the Act authorises defaulter of such license to pay compensation. It gives all those powers to the Minister of Petroleum Resources under its s 34 but made no remarks on the authority of the governor under s 1 of the Act.

Oil presents a horrendous paradox in Nigeria. It provides enormous wealth and means of patronage to the rentier state and its joint venture partners including the transnational oil companies.[469] The commodity is mainly a source of anxiety and misery as they kept losing out the euphoria of the gains of the costly resources. From inception, State has made systematic and sustained efforts to control the local oil-bearing communities from asserting or holding any consequential stakes in the oil resources through various laws.[470] The state employs unmitigated paraphernalia of laws and public policies to privilege interests of its business partner's multinational corporations primarily.[471] The rent-seeking interests and devices of the federal state not only lie-beneath but complicate the oil conflicts without

[468] Under s 29 of the Land Use Act.

[469] Kenneth Omeje, "The Rentier State: Oil-related Legislation And Conflict In The Niger Delta, Nigeria, Conflict, Security and Development", Vol. 6, Issue 2,(2006),pp 211-230. http://www.tandfonline.com/doi/abs/10.1080/14678800600739259#.U5MvzyhhsTA visited 7/06/2014

[470] See again Colonial Mineral Ordinance supra, Public Lands Acquisition Act 1917, the later Land Use Act, the 1999 constitution, Petroleum Act el cetera.

[471] This may be responsible for their massive resort to violent protests and legal disputes that had hindered success of Multinational Corporations across the region. See also *AG v Abia State supra*.

legal solution. This leaves the local oil-bearing region in Nigeria with limited breathing space,[472] due to environmental degradation and land right extinction.

At common law as discussed in the chapter, the legal principle rooted in *quid quid plantatur solo solo cedit*[473] was judicially spelt out in *Otogbolu v Okeduwa*[474] by the Supreme Court of Nigeria. It held that' this connotes what is affixed on or underneath the land belongs to it and should be managed by the landowner'. The owners of land in this context may be local community, state or federal governments depending where minerals are found. This is subject only to the rights of the adjoining neighbouring boundaries.[475] The landowners have resorted to self-help instead of litigations due to poverty. This confirms the African adage that if a provoked house boy cannot match his wicked master strength with strength, he maims the wicked master's favourite goat.

The land owners now need governor's consent through deed of assignment for the use of their land. Nigeria court has held in *Okusanya v Ogunfowara*[476]that nothing can cure the defect of non-consent of the Governor before execution of mortgage. It is instructive to note that s 1 of the Land Use Act vests all land to Governor while s 1 of the Petroleum Act and s 44(3) of constitution vest all minerals to the federation. Again, it remains unimaginable to state the legal implications of failure to obtain the Governor's consent before alienation of interest in land as Land Use provides. Indisputably, ss 21, 22, and 34(7) foreclose landowners rights to alienate their land in any manner whatsoever without the requisite consent of the Governor. The implication of s 28(2)(a) and (3)(d) is that such alienation shall be revoked. S 26 of the Act declares such act null and void. It is imperative to state that such oversight or "wrongdoing' (improper alienation) has been made illegal with stiff penalty in *Savanna Bank v Ajilo.*[477] The diminished estate in land - Right of

[472] See also s 44 (3) supra. This study critically finds that the present total control and management of oil land and oil emerged by the contemporary rentier state and who later mobilized and continued exploitation by the legal instrumentality of law-making to entrench and advance its rent-seeking interests in the Nigerian oil economy. See again Kenneth Omeje ibid. Pp 112 – 230.

[473] Whatever affixed to the land belongs to the land.

[474] *Otogbolu v Okeduwa* (1985) 6 S.C. I50 at p 151.

[475] Despite the fact that it vests total ownership of land and minerals to state and federal, the Land Use Act still allows the individuals with right to use their land.

[476] *Okusanya v Ogunfowara* (1997) 9 NWLR (Pt 520) 347.

[477] (1989) Vol 12 (pt 97) 305. See also ss 34(8) and 36(6) of the Act and *Macleans v Inlacks Ltd* (1980) SC1.

Occupancy, can now only be alienated with the consent of the State Governor[478] in Nigeria, or with the consent of the relevant Minister in Tanzania.[479]

Governor's power of revocation has become a sword rather than a shield and therefore warranting scathing criticisms. The provision of revocation has been lambasted "as a piece of military undemocratic and autocratic order". The author declared that "an uncontrollable power of revocation is the denial of Right of Occupancy recognized in favour of a former landowner or occupier. It is this power that lends itself for abuses as witnessed in many leases during the second republic.[480] The Act has no provisions for checks and balances for the exercises of power of revocation and legislature have not done anything to check it.

Nigeria Supreme Court has intervened to upturn the pervasive of power of revocation by Governor in *LSPDC v Foreign Finance Corporation.*[481] Here, the Governor revoked and allocated same land to third defendant who is a Private Liability Company. The court held that an allocation of a property of a private Company for same purpose could not be either for overriding public interest within the intendment of s 28 of the Act. This decision was upheld in *Administrator of Abacha Estate v Eke-Spiff* supra where court reversed revocation of land carried out by a military governor and reallocated same to the then Head of State. Advocate[482] has bemoaned the plight of individual landowners whose lands were compulsorily acquired by the state Governor contrary to s 44(1) of the constitution. The provision prohibits compulsory acquisition of land without due process and adequate compensation. It provides that "No moveable property or any interest in an immovable property shall be taken possession of compulsorily…"[483]

Non-compliance to this provision is a flagrant subversion of s 29(4) (c) and s 33(1) of the Act. It is against *Obikoya & Sons Ltd*[484]decision where the court held that the reason for

[478] See ss 21 & 22 of the Act and the court upheld in *NITEL PLC v Rockonoh Property Co. Ltd* (1995) 2 NWLR (Pt. 378)

[479] Ss. 11 (1) (7) Land Ordinance

[480]Where Right of Occupancy belonging to members and supporters of opposing political parties were arbitrarily revoked by ruling parties. See B. O. Nwabueze. Nigeria Land Law, Nwanufe Press, Enugu Nigeria (1972). See also Cyril I. Obi, "Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta", Volume 30, Issue 1-2, (2010) Pp 219-236.

[481] *LCPDC v Foreign Finance Corporation* (1987) 3NNLR (Pt 50) 413 - 467.

[482] See 'Advocate Newspaper', (one of the Nigerian Newspaper) February (2003) pp 1 and 19.

[483] It states further "…no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law". S44(1) (a) requires the prompt payment of compensation therefore and subsection or (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

[484] *Obikoya & Sons Ltd v Governor of Lagos State & Anor* (1987) NWLR (PT 50) 385.

revocation must be well spelt out in a notice of revocation. In *R (Sainsbury's Supermarkets Ltd) v Wolverhampton CC*,[485] the Supreme Court in England held that Wolverhampton City Council acted for 'an improper purpose' when it took into account a promise by Tesco to redevelop another site, in determining whether to make a compulsory purchase order over a site possessed by Sainsbury. Here, Lord Walker stressed that "powers of compulsory acquisition, especially in a "private to private" acquisition, amounts to a serious invasion of the current owner's proprietary rights". [486] There used to be confusion in the court to decide the merit or otherwise of Governor's power of revocation[487] in Nigeria. The court could have considered Eastern Nigeria Land law Cap 105 Laws 1963 that compulsory acquisition of land is contrast with s 43(b) and (c) of the Laws. This confusion has been cleared in similar position by England court in *Prest v Secretary of State for Wales*,[488] where Lord Denning MR held:

> It is clear that no minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it... when it is necessary in the public interest. ...therefore, where the scales are evenly balanced for or against compulsory acquisition the decision by whomsoever it is made should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised… If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.

In *Ereke v Military Administrator of Mid-Western States*, the government of the Mid-Western State of Nigeria purported by a notice of acquisition, to acquire compulsorily for the public purpose the land in which the plaintiffs/appellant claimed an interest. The Government later leased the land to a foreign investor who was incorporated in Nigeria under the companies.[489] The Plaintiffs objected to the lease issued to them.[490] The defendants were of the opinion that the lease to the foreign company was for a public purpose within intendment of the Public Lands Acquisition Law. The landowners opposed and sued against the acquisition and appeal succeeded. The main argument is

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[485] *R (Sainsbury's Supermarkets Ltd) v Wolverhampton CC* [2010] UKSC 20.

[486] *R (Sainsbury's Supermarkets Ltd) ibid*. See *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] UKPC 7, on the proper procedures for assessments of compensation.

[487] See *Ereke v Military Administrator of Mid-Western States* (1984) 10 SC p 59.

[488] *Prest v Secretary of State for Wales* (1982) 81 LGR 193. See Lord Radcliffe in *Burmah Oil Co Ltd v Lord Advocate* [1965] AC 75, 115, where he held that, "the Crown has never claimed or sought to exercise in time of peace a right to take land except by agreement or under statutory power".

[489] Decree of No. S.I. of 1968

[490] It was quite clean that the lease was for a permanent business transaction and not a temporary arrangement between the parties.

uncoordinated acquisition of land for oil extraction and the inequitable distribution of its benefits. This fuels disenchantment and conflict between local communities, the government and exploiters and beneficiaries of the oil resources in their region. Land reform could be only a way towards a better administration of land.[491] It requires more efficient regime to secure land for future purposes.[492]

As noted in chapter two of this work, the Nigeria constitution guarantees property right and rights to compensation for land acquired compulsorily. It gives "every citizen of Nigeria the right to acquire and own immovable property anywhere in Nigeria".[493] Consolidating this proviso, s 44(1) provides, "No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law … requires the prompt payment of compensation and gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation…". S 28 of the Land Use Act dealing with land and property rights in an unequivocal sentence states, "It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest". It defines overriding interest to mean requirement of land by the state and Local Government for public purposes within the state or federal government for public purposes of the federation; "the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith".[494]

S 29 of the Act empowers the Governor to pay compensation when he compulsorily acquires land under s 28. It provides, "where right of occupancy is revoked for the cause set out above, "the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their 'unexhausted'[495] improvements".[496] Where it involves mining and oil pipeline laying, s 29 (2) states that compensation is made under the appropriate provisions, such as the Minerals Act, Mineral Oils Act or any legislation replacing the same. The reparation is given only for buildings, crops and other improvements made on the land not necessarily for the value of the land so acquired. This

[491] Donald C. Williams, "Measuring the Impact of Land Reform Policy in Nigeria", The Journal of Modern African Studies / Volume 30 / Issue 04 / (December 1992), pp 587-608.

[492] Emmanuel O. Nwabuzor, "Real Property Security Interests in Nigeria: Constraints of the Land Use Act", Journal of African Law / Volume 38 / Issue 01 / (Spring 1994), pp 1-18

[493] S 43 ibid.

[494] Its effects on environment were not contemplated. This includes the requirement of the land for the extraction of building materials and other related matters thereof. See generally s 28 (2) and (3) of the Act.

[495] Emphasis mine

[496] S 28 (2) and (3) ibid.

includes where such land is acquired for oil and other mineral purposes. The Oil Pipelines Act[497] s 20 (4) opines; "no compensation shall be awarded in respect of unoccupied land as defined in the Land Use Act, except to the extent and in the circumstances specified in that Act". It makes no clarifications on how to quantify such compensations under s 29. Rather the Act makes it subject of court cases by empowering the court to determine claims and award compensations as it considers "…just in respect of any damage done to any buildings, cash crops or profitable trees..."[498] S 20 (1) holds, if claim is made under subsection (3) of s 6, the court shall award such compensation as it considers just in respect of any damage done to any buildings, cash crops or profitable trees by the holder of the permit in the exercise of his rights and in addition may award such sum in respect of disturbance if any.

In determination of losses or interests in land of a claimant, s 20 (3) position is that, the court shall assess the value of the land or the interests injuriously affected at the date immediately before the grant of the licence. It shall assess the residual value to the claimant of the same land or interests' at the date of the grant of the licence to determine the loss suffered by the claimant if such residual value is a lesser sum.[499] This makes the court determinant of the compensation for victims of land acquisition for mineral activities without expert valuers. It is hard to know the value of what to be compensated by this proviso. No difference is made between acquisition for mineral exploration and other overriding interest or where the oil firm is a private.[500] It is submitted that the victims will be deprived of the benefits and livelihood as most are poor illiterates and ignorant of court processes.

Where a community is entitled to compensation, it is within the discretion of the Governor to determine who shall be paid. Thus, the Act still recognises that community is capable of owing land. The controversy that may usually arrive is the amount payable with provision of Land Use Act vesting to the appropriate Land Use Act and Allocation Committee to decide on it. Again, by a critical examination of s 29, one can conclude that a holder of an empty land or bare holding,[501] without improvements or developments like buildings or

[497] cap 338 LFN 1990
[498] Oil Pipeline Act s 20 (1)
[499] See ss 19 – 23 of the Act.
[500] See *LSDPC and Obikoya* cases. Most of these communities and individual land owners have resorted to violence as seen in Niger Delta.
[501] F. O. Adeoye, "Use of Right of Occupancy as Security - A caveat" 2 GRBPL (No. 3) (1998) Pp 18 - 22

any structures in any form[502] has no right of compensation if such has no improvement. It did not consider commercial value of the land. This simply means that compensation is paid based on only improvements that have not been wholly exhausted by the holder of the certificate[503] when it was acquired.

The Act provides that where a person chooses to be resettled as preference, he/she shall not as of right be entitled to any compensation.[504] This is an outright repeal of the Public Lands Acquisition (Miscellaneous) Act 1976 save for land already acquired compulsorily for the commencement of the Land Use Act. It is submitted that the Act should have provided for a criminal offence for its non-compliance or illegal acquisitions, time within compensation shall be paid and punishment for failure to pay. This would have been seen as a psychological deterrence the actors and defaulters. The Act did not take in account position of s 44 (1) of the constitution that compensation must not only be made but must be adequate. In *Horn*,[505] Scouth LJ stated: "the word compensation almost itself carried the corollary that the loss to the seller must be completely made to him on ground that unless he received a price that fully equalled his pecuniary detriment, the compensation will not be equivalent to the compulsory sacrifice". What is essential is that the compensation must be paid in accordance with the prevailing market value.[506] Under the Nigeria law, where damages came to the victim in possession, the quantum to be compensated is cost of reasonable reinstatement but where farmland, economic trees or agricultural produce are involved, assessment of damages are in trespass.[507] The rule is that the affected property could be quantified to be restored to status quo ante.[508]

The researcher proposes inclusion of s 15 of the Public Lands Acquisition Act[509] into s 29 of the LUA. It provided as follows: "in estimating the compensation to be given for any land or estate or interest therein..., court shall consider... the value of the lands, estates, interests or profit shall be taken to be the amount which such land, estates, interests or profits if sold in the open market by a willing seller might be expected to receive'. Also, s 16 of the Zimbabwe constitution 1978 should be adopted in Nigeria. It provides, "no

[502] U. Jack-Osimiri, "Award of compensation to Holders of undeveloped plots under Land Use Act; case for Reform" vol. 2 (No. 7) Justice Journal (1991) Pp 29 - 34.
[503] S. 29 (1) (2) Land Use Act 1978.
[504] S 33 (1) – (3) ibid.
[505] *Horn v Sunderland Corporation* (1941) 21 CB 26 at 40.
[506] Egwumuo op cit p 419.
[507] Amari Omaka, *Municipal and International Environmental Law*, published by Lions Unique Concepts Lagos Nigeria
[508] *UAC (Nig) v Ekunwe* (1986) 4 SC 36
[509] (1917) cap 167 Laws of Eastern Nigeria

property of any description or interest or right shall be compulsorily acquired except under the authority of a law that, 'requires the authority to give reasonable notice of intention to acquire the property, interest or right to any other having other interest or right therein that would be affected by such decision... requires that the acquisition is reasonable in the interest of defence, public safety, public order, public health..." This is in sharp contrast to the Nigeria Land Use Act s 28 (7) where revocation is automatic upon the receipt of the notice by the holder of right of occupancy. Note that the England Acquisition of Land Act 1981, s 12 provides that notice of compulsory purchase should not be less than one month while s 13 provides for owner of such property rights to objection.

In England, the Royal Institution of Chartered Surveyors operates a Compulsory Purchase Helpline for victims.[510] The land owner is entitled to compensation for the value of your unexpired term or interest in the land, and for any just allowance which ought to be made and for any loss or injury sustained.[511] *Burmah Oil Company Ltd v Lord Advocate* supra, was a court case, from Scotland and decision appealed to the House of Lords. The House of Lords held in 3 to 2 majority that though "the damage caused was lawful; it was the equivalent of requisitioning the property. Any act of requisition was done for the good of the public, at the expense of the individual proprietor, and for that reason, the proprietor should be compensated from public funds." In England, to assist in the process of the authority acquiring, requisition for information form is served on all people they think own or occupy property they wish to acquire. The form will ask for details of their interest in the land (for example, freehold or leasehold) and also of anyone else who has an interest in it.[512] Land acquisition model and environment which are affected by these acts are things that need to be considered by law reform.

Under ss 1 and 2,[513] the state Governor is a mere trustee or Administrator[514] of all the Land within his state and not a beneficial owner as held in *Savannah Bank Ltd v Ajilo.*[515] This

[510] *Compulsory Purchase and Compensation: Compulsory Purchase Procedure* Published by Department for Communities and Local Government London *(*October 2004) accessed via https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11487/147639.pdf 16/04/2015. A tribunal for England and Wales set up under the Lands Tribunal Act 1949 was also in place to tackle such tribunals or disagreement in the respect.

[511] Compulsory Purchase Act 1965 s 20.

[512] Land accordingly includes buildings and structures. It also comprises existing interests and rights in land, such as freehold or leasehold together with any existing rights. These can under the law be compulsorily acquired either as a whole or in part in England. This specification is productive.

[513] LUA Nigeria. See Tanzania Land Act 1999 ss 3 (1) (a), 4 (1) and s.4 Land Ordinance which provide that the President of Tanzania is vested with public land as a trustee for and on behalf of all citizens of Tanzania.

[514] *Fayose v Bello* (1983) 2 ODSLR 44.

reasoning of the law needs to be considered when issue of compensation comes for land compulsorily acquired by the Governor. A careful doctrinal study of compulsory acquisition law[516] and the principles evaluated prior to 1978, show that the LUA is unjust and inequitable with compensation to holders of undeveloped lands. Although, LUA vests the absolute ownership of land on Governor, the land owners still retain possessory title[517] as occupiers are entitled to an estate in landed property to hold and enjoy its benefits.[518] This at least can be reduced to proprietary right with constructive trust using their certificate of occupancy which makes it enforceable as Clarke noted. Occupier is vested with usufruct right to use, occupy and take all profits.[519] This also applies to customary use too[520] and human environment that was not mentioned by Oil Pipeline or Petroleum Acts.

The basic customary law principle of land ownership in Nigeria as was graphically stated by a Yoruba Chief, Gboteyi, and the Elesi of Odogbolu[521] in his evidence before the West African Lands Committee thus; "I conceived that land belongs to the vast family of which many are dead, few are living and countless members are still unborn".[522] Land is one of the most basic factors of African agriculture and Nigeria in particular. Therefore the institutions governing their control should be critical and systematic in determining legal implications and economic value. In Nigeria, less than forty percent of the population lives in urban areas.[523] The Privy Council had therefore accepted as substantially true in Legal principle of WALC supra where Rayner CJ had opined that:

> Land belongs to the Community, the village or the family, never to the individual. All members of the community, village or family have an equal right to the land, but in every case the chief or the headman of the community or the village or head of the family has charge of the land and in loose of speech is sometimes called the owners. He is

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[515] *Savannah Bank Ltd v Ajilo* (1989) 1 NWLR (pt. 97) 305, 309 (SCN).

[516] S 28 LUA supra with respect to revocation of Right of Occupancy.

[517] *Makanjuola v Balogun* (1989) 3 NWLR (pt. 108) 192, 195. See ss 5, 6, 34 and 36 of the Act.

[518] *Mateyo v Mateyo* (1987) TLR 111 at 112.

[519] Tanzanian land policy and village land Act 1999 under her Land Act 1999.

[520] This consideration should be pertinent in determination of acquisition and compensations. The practice of no qualification is outright that is not diminished in any way is faulted by the prevailing feature of ownership under customary law notion that land belongs to the community. See Osmiri "Nature of Native Land Title & Compensation for Compulsory Acquisition" op cit.

[521] Yoruba is in the Western part of Nigeria.

[522] W.A.L.C (ed), 104 p. 183 cited by Uwezulike I. A., in *ABC of Contemporary Land Law in Nigeria* (Revised and Enlarged Edition), (Snaap Press Nigeria Ltd) 2013 at pp 14 - 16. Also by Fenske J. 'The Emergence (or not) of Private Property Rights in Land: Southern Nigeria, 1851 to 1914'.
Accessed via http://economics.yale.edu/sites/default/files/files/Workshops-Seminars/Economic-History/fenske-061129.pdf on 20/12/2014 on 20/3/2015.

[523] 2003 World Population Data Sheet. See Fenske J. ibid p 1.

> to some extent in the position of trustee and as such holds land for the use of the community or family. He has control of it and any member, who wants a piece of land to cultivate or build a house upon, goes to him for it…[524]

The above legal pedigree has recently been criticized by some writers. Jegede[525] has doubted if this position by the Privy Council can presently survive a projection on the plane of time. The system of land tenure in Nigeria influences other variables of investment incentives in this sector. This includes access to credit, household labor supply, ceremonial expenses; distributions of land, power and income, the incidence of conflict and violence, and ecological management. Though, the actual operation of this impact is highly context-dependent. These variables influence the activities of the property ownership with and without law except where such is expressly stated and fully enforced as witnessed in the case of oil and gas development and leases – joint venture regime for its exploration. It will be hard if not impossible to discuss issues of mineral resources' ownership or investment without raising the issue of how land is owned. "It is established law that you cannot build something on nothing and expect it to stand as the whole edifice will collapse".[526] Land is subject of mineral resources underneath thus minerals housed by it cannot be discussed outside the ownership and control of the subject-matter which is 'land'. The research finds review of decision in *Savannah Bank Ltd v Ajilo* desirous.

3.6 CONCLUSION

The Nigeria Land Use Act took a radical measure from its inception. It nationalised land the Governor control of land administration in Nigeria. The Law crashed land rights in Nigeria irretrievably without a review. What becomes the position of the ancestral landowners on these natural gifts to humanity disappeared. Now, land is owned by state Governor as mineral resources is property of the federal government. The writer identified that the Act brought the following implications on former rightful landowners. These include:

i. The choice and power of land alienation became grossly deprived and revolves on the mercy of Governor, thus no consent to alienate no right to land.

[524] Umezulike I. A. Iibid at pp 15 – 16. See also WALC Report on Land Tenure in West Africa in 1898 and *Amodu Tijani v Secretary of Southern Nigeria* (1921) 2 AC 399 at 404. It suffices to say that ownership of land in England has greatly evolved and thus, there is still recognition of private ownership and to some extent, solid minerals are still owned by private persons. This regime needs to be fully introduced in Nigeria legal theory.

[525] Jegede M. I., "Changes Affecting Communal System of Landholding", Journal of Business and social Studies (1961) p. 93

[526] Decision in *Macfoy v U.A.C.* (1962) AC 158 per Lord Denning.

ii. Choice of due quantification and calculation of compensation for land compulsorily acquired for overriding public purposes including mineral expropriation could be unpredictable and political.

iii. The Act provides the governors with power to victimise opposition by compulsory acquiring their land - *Nkwocha v Governor Anambra State.*

iv. The Local Communities' rights over their land and minerals are revoked.

v. Local communities and landowners cannot decide or determine operations carried out in their land as multinational Oil Companies deal with government.

vi. There is likelihood of mismanagement of benefits or compensations to communities. This promotes personal enrichment by government officials - *Administrator of Estate of Abacha v Eke-Spiff* supra.

vii. The landowners lose land/property rights, ancestral graves, grotto, sacred sites, economic trees or thing held to be sacred or objects of veneration perpetually to government at will.

States' legitimacy on the expropriation and management of oil and gas is initiated through compulsory acquisition of lands as succinctly foreshadowed by the LUA s 28.[527] Nigerian society attaches a great value to land since houses which have been acclaimed the second most vital need in the hierarchy of man's wants stand on land. Since oil was found in Nigeria, their liturgy has been desecrated leaving the country to wallow and vacillate in mystified era in search of a legal solution for overarching landownership struggle. The research found proposed reform as empirical law that will herald definite land and mineral ownership. This obsolete regime remains legal thalidomide in Nigeria without a wide range and acceptable legislation. The researcher calls for a review of these laws which barricade private ownership of land and control of its minerals. It has been shown that the powers conferred on the Governor under the Act have not been appreciated and deployed for good of greater number of Nigerians. However, s 28 LUA needs liberalization to consider compulsory purchase where occupier can have right of proper consultation before acquisition.

[527] Lands became subject of compulsory acquisition by government worldwide since one of the costliest mineral resources "crude oil" is found on the surface of the earth.

Land acquisition particularly for oil exploration by local and transnational companies has dynamics and ambiguities underpinning resistance of local communities in Nigeria. Ss 43 and 44(1) of CFRN are being violated by s 28 LUA. Thus, LUA require excision from the constitution. A critical consideration should be given to the above provisions before land right is revoked. The more precisely property rights are stated and assigned, the lower the cost of establishing ownership, and the extent of one's interest in any given piece of land. Proceeding from the efficiency theory or, contemporary commercial practice, it is not willing to accommodate the ancient, unnecessarily complicated system of conveyancing. This makes the taking of security into real property expensive. An efficient regime of secured transactions should be simple, fast, cheap and predictable. The importance of regulation and redistribution of land has become almost universal to governments.

Under s 28 of LUA, this kind of land policy and regulation has been over-rated and couched in impressive language that justifies increasing regulatory control as the only viable way to revolutionize the productive use of land for national development. It sounds that land reform signifies one element of a larger trend involving the expansion of the state at the expense of other forms of societal authorities. But, this is more political statement than legislative phrase. Concept of alienation under ss 21 and 22 requires liberalization. Where Governor revokes the land rights, the holder of Certificate of Occupancy must be paid adequate compensation in line with compulsory purchase as witnessed in England. The Act deserves expurgation from the constitution as it has no significance there. Land and minerals cannot be considered differently from the environment that holds them. This will serve the general interests of Nigerians and foreigners. Customary and statutory rights of occupancy make no meaning with Governor’s power of revocation thus requires deregulation.

It is clearly established that the consent requirement is an integral component of the right of occupancy under the Act. This is a sledge hammer in the hand of the Governor to effectively control and manage land in Nigeria. Governor’s absolute and uncontrollable discretion to give or refuse consent as he wants unfettered by judicial control is evidence that the LUA had thought that the operators would be good men who like the Catholic Pope would be incapable of thinking or doing any wrong. That the power has been perverted is a matter not considered by the Act. However, that would not be sufficient reasons to make contrivances designed to diminish the scope of the consent required under the Act. This is large yet, cannot control minerals of the land.

The researcher proposes its excision from the constitution to allow the State Assembly to review, reveal, repeal and amend where and when necessary. Illegal revocation shall be considered as criminal offence. The Nigeria 1999 constitution should be amended to allow state with land autonomy except with federal land. Its enforcement should include lands with mineral resources as no exception was either made or contemplated by the Act. Finally, certificates of right of occupancy holders should allow quantified and qualified compensation where land is acquired for public overriding interests which often include mineral extraction.

CHAPTER FOUR

OWNERSHIP AND CONTROL OF OIL AND GAS RESOURCES IN NIGERIA

4.1 INTRODUCTION

Petroleum resource control is "the heart of ethics' macro-economic and politics in Nigeria. It is all about planting every Nigerian firmly, from the womb to the tomb; from the beginning, to the centre and at the end of every aspect of Nigeria's public policy".[528] Crude oil is the microcosm of her economic hob. It is the heart that that sustains the country's gross national income and promotes her gross domestic product. Oil is the Nigeria's life-wire that the annual budget depends. This chapter discusses the ownership and control of petroleum resources, contentious revenue distribution formula and philosophy of Nigeria federal system.

Empirically, we shall critically examine provisions of petroleum laws and in particular the Nigeria constitution, look at the Nigerian Supreme Court decision in *AG Federation v AG Abia State & 35 Ors.*[529] It will study land laws in respect to compulsory acquisition for and relate it to ownership and control of natural resources and its relationship to land. The writer will further enumerate some implications of central ownership and state of Nigeria states and local communities'. The divergences of petroleum control [530] will be considered.

The work will discuss the impacts of military decrees on petroleum ownership and nation's legal development. It will explore in-depth measure the nature of control of petroleum resources and the philosophy of federal system under her current constitutional provisions and note how best to correct any lapses. It will give a concise review on effects of mismanagement of the oil resources and impacts the laws have created on oil matters in Nigeria. Apparently, the agitation by the states and local communities of the Niger Delta on oil deposits in their region will be reviewed. The chapter will note how the country deviated from the established legal platform of 1947 federal principle established by her colonialists to the present legal disorder. The researcher will then discuss the three major

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[528]Peter Alexander Egom, 'Resource Control: The Problem & Solution' (published on 10 February 2006) via http://www.nigeriavillagesquare.com/articles/peter-alexander-egom/resource-control-the-problem-a-solution.html, visited on 3rd June, 2014.

[529] *AG Federation v AG Abia State & 35 Ors* (2005), 12 NWLR (Pt.940) 452; (2005) 6 S.C (Pt I) 63; (2005) 6 S.C (Pt I) 63. The case shall be hereinafter referred to as *AG Federation v AG Abia State & 35 Ors* or Littoral Case. *Inter-lia*, the law includes; Petroleum Act, the Land Use Act, Revenue Allocation (Derivation) Formula.

[530] Chapter 6 will make a comparative study of ownership in western world like United States, United Kingdom, other European nations, Canada and some developing nations and their statutes, regulations on the subject.

stages of her constitutional development. This will date back to pre and post-colonial regimes. The skeletal period of civilian regime from 1960 to 1999 will be conversed. This period had profuse and intermittently incursion of ethno-military internal colonialism.[531] The research will consider approach of the judiciary on petroleum laws and how comprehensive these laws are and their enforcement strategies.

Undeniably, enforcement of mineral right is all about justice, social inclusion and giving every Nigerian rightful access to mineral oil and equitable benefits at all level and times. The contentious debate of oil ownership between states and federal governments will be traced and reason behind importation of foreign court decision to Nigeria on *Abia case* will be encapsulated. The chapter will make essential assessments on the approach of multinational corporations to the local communities and contractual obligations – joint ventures. It will consider laws and enforcements of mineral oil in Nigeria. The work will gain knowledge of the causes of Niger Delta oil crisis, litigations and environmental challenges the region is facing. There will be brief comparisons of other jurisdictions to draw views of some advanced practices like US federal principles. Understanding these will help to remedy the contentions of Nigeria petroleum ownership to strengthen its laws.

4.2 OIL AND GAS LAWS, OWNERSHIP AND CONTROL IN NIGERIA

The contentious debate of oil ownership in Nigeria is an offshoot of the colonial rule[532] and military derisiveness in Nigeria. Colonialists established a federal system for the country[533] in 1947 by dividing the nation into three regions.[534] But, the constant interruptions of military intrigues and regional sentiments have given the country 36 states and capital.

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[531] The third has been running since1999 and now where civil regime has lived over four regimes of sixteen years without military coup. See Omo Omoruyi as forwarded by Laolu Akande. 'The politics of Oil: Who owns Oil, Nigeria, States Communities?' Published on January 31, 2001 via http://nigeriaworld.com/feature/publication/omoruyi/oil.html visited on 23rd May, 2014.

[532] See the Mineral Resources Ordinance 1945 of England s 1. The provision made all minerals and related property including land el cetera, the property of the Crown.

[533] See British Colonial Constitution (Nigeria) 1947; Ronald L. Watts, *Comparing federal systems in the 1990s*. Kingston, Ont: Institute of Intergovernmental Relations, Queen's University, (1996) pp. 6-14, 19-29; Ejobowah John Boye, Who Owns the Oil?: The Politics of Ethnicity in the Niger Delta of Nigeria, Africa Today, Vol. 47, No. 1, (2000) pp. 28-47 Gerald A. McBeath and Andrea R. C. Helms, 'Alternate Routes to Autonomy in Federal and Quasi-Federal Systems'; Publius 13 (4): (1983) pp. 21- 41 http://publius.oxfordjournals.org/content/13/4/21.full.pdf+html accessed 26/7/2014.

[534] The regions comprised the Eastern (Igbo speaking based), the Western (Yoruba speaking based) and the Northern (Hausa) basing this principle on the ethnic distinctions of the country thereby giving the Nigeria nation a federated state face and culture. See Ayodele Embry, Jennifer Otitigbe, Celeste Thomas; 'The Price of Oil', http://www.stanford.edu/class/e297c/trade_environment/energy/hpetroleum.html accessed on 22nd of May, 2014. See also A. S. Ayodele, "The Conflict in the Growth of the Nigerian Petroleum Industry and the Environmental Quality". Socio-Economic Planning (1985), PP 295-305.

Military various decrees were promulgated to control petroleum[535] minerals. The CFRN[536] s 44 (3) from onset gave a total ownership and control to federal authority. The region has witnessed various societal crisis, litigations and environmental challenges. These made the government and multinational corporations to lose huge crude oil, facilities and money. This may confirm a proverbial dictum as stated earlier that: "if a provoked house boy cannot match his wicked master strength with strength, he maims the wicked master's favourite goat".[537] Whether in this context, the federal government's exclusive control of what they assumed their oils and the contest for a reclaim could be viewed along this idiom. The constitution provides that Nigeria is one indivisible and indissoluble sovereign state to be known by as "the Federal Republic of Nigeria". S.2 (2)[538] states that Nigeria shall be a 'Federation' consisting of States, local governments and a Federal Capital Territory.[539] These fundamental ingredients of the law support federal principles.

The Petroleum Act[540] of England defines petroleum as: "…any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata; but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation". Under the Nigeria Petroleum Act[541], 'crude oil' means mineral oil in its natural state before it is been refined (excluding water and other foreign substances).[542] From this interpretation, it is derived that 'crude oil' which is mineral oil in its natural strata prior to its refinery is not in contest but 'petroleum products' which is subject to state exclusive ownership.[543] It is deduced from the above that the Nigeria Petroleum Act sprout out from the British Petroleum Act. The question is what resources ownership could mean under a federal system. Or does it apply same to monarchy regime of England through which Nigeria derived her legal system? This appears more confusing

[535] This is same as oil and gas, mineral oil in the research and will be interchangeably used here.

[536] Constitution of the Federal Republic of Nigeria 1999 (as amended)

[537] Considering the rate of crisis, vandalism, abduction, militancy el cetera on the petroleum equipments, industries, expatriates in particular government in general which is affecting in no small measure the production of petroleum and the national GDP as country whole presently depends predominantly in oil.

[538] Nigeria presently has 36 states, 768 Local Government Areas and Federal Capital Territory, Abuja.

[539] See s.3 generally.

[540] See Petroleum Act 1998 - the amended Petroleum Act 1934 which is the Nigeria parental legislation.

[541]See Nigerian Petroleum Act 1969 (No. 51) s 15 (1).

[542] It is in the opinion of the researcher that land may include crude oil underneath in its natural strata. Also, the Act interprets 'petroleum' to mean mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

[543] Accordingly, petroleum products includes motor spirit, gas oil, diesel oil, automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubrication oil or grease or other lubricant. See again s 15 (1) above and which is subject to federal ownership by this proviso.

than legalistic. In decisive support to s 44 (3),[544] s 1(1) of the Petroleum Act provides that the: "Entire ownership and control of all petroleum in, under or upon any land to which this section applies shall vest in the state. The term 'vest' is interpreted to mean 'own'.

Ownership of movable and immovable property was provided for all citizens of Nigeria under s.43.[545] From the interpretation of Nigeria Petroleum Act, immovable property may include 'crude oil in its natural strata'.[546] This proviso is overridden by other provisions of the same law[547] particularly as it affects property rights over land and its natural inheritance. The nature of petroleum and other natural resources ownership and control in Nigeria is similar to the legal system of her colonialists which manifested all through her legal jurisprudence.[548] Under this legal theory, mineral resources in, under, and in the water ways and on the land belonged to the government of the federation[549] while all land in each state of the federation is under the governor of each state.[550] The state claims rights over minerals as the law gives the entire land in the state to the governor while the communities who are the immediate landowners come under ss 6, 9 and s 36 of the Act to claim their rights over land or minerals. But, the constitution was assertive that all property in mineral is exclusive to federation.

Central ownership of mineral resources is derived from Regalia System under Roman law.[551] Under this framework, the dominion of the soil is vested in the sovereign but the right to use and profit from the soil received separate attention. Thus, sovereign monarchs were entitled and assumed ownership of subsurface minerals.[552] The concept was subsequently integrated into the dominial system where the ownership of natural resources

[544] S 44 (3) only provides as follows: "Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly".

[545] The constitution, s 43, provides: "subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".

[546] See again the Petroleum Act of Nigeria 1969 s 15 (1) *supra.*

[547] S.44(3) of the constitution. See Mineral Ordinance of 1945, Interpretation Act of 1964 among other laws.

[548] Since 1st October, 1960 when Nigeria had her independence from Britain. Due to the country's dwindling democratic history, Nigeria nation has not been able to change the 'Old Orders to herald burgeoning federal constitution.

[549] See s 44 (3) *supra.*

[550] See as opined by the Land Use Act (LUA) s 1 supra. While mineral resources are controlled and managed by the federal government, all land in each state are directly under the control of the state governor of each state except federal land or its Agencies.

[551] J. K. Boyce, 'From Natural Resources to Natural Assets' in J. K. Boyce and B. G. Shelley (eds) Natural Assets: Democratising Environmental Ownership (Island Press, Washington DC (2003) P 7.

[552] J. K. Boyce ibid

was vested in sovereign.[553] Therefore, as the ownership of the entire minerals including oil and gas are vested on the state (federal), community and host states are with no right except compensation that is only enforceable by legal instruments. Where this is divested, they are left with no right or compensation over their environment,[554] land[555] and minerals.[556] The natural resources are thereby treated in 'contradiction to land estate[557] and ownership of minerals being vested on the federation. The law treats land and mineral ownership in a fragmented way despite their physical coalescence. This is reliant on legal legitimacy of vesting provisions with implementation of strong and effective concessional framework for granting licenses for explorations on federal government exclusively.

Oil Pipeline Act ss 7 – 14 provide for oil and gas license regime.[558] S 15 opines that licence shall not authorise any person to enter upon, take possession of or use any of the following lands unless the owners or occupiers or the persons in charge thereof have given their prior assent, "any land occupied by any burial ground or cemetery and any land containing any grave, grotto, area, tree or thing held to be sacred or the object of veneration". S 15 (2) concludes that if any doubt shall arise whether any lands fall within those described in this section, or who the owners or occupiers or persons in charge thereof are, the decision of the High Court shall be final.[559] These provisions appear to be covering both interests of states and local communities in land including natural resources. There seemed to be a false dichotomy between land and mineral resources as applicable to the Mineral Ordinance aforementioned but each cannot exist without the other and should therefore, be grouped and discussed accordingly.

[553] See Y. Omorogbe and P. Oniemola, 'Property Rights in Oil and Gas under Dominial Regimes' in A. MCHary et al (eds), Property and the Law in Energy and Natural Resources (Oxford University Press) (2010) p 120.

[554] S 6(6)(c) of the constitution of Nigeria supra makes the enforceability of the s 20 of the constitution on clean environment non-justiciable. The same thing applies to land and minerals where federal overrules states or host community. See the constitution s 44(3) and LUA s 28 and s 29.

[555] The Land Use Act ss 28 and 29.

[556] CFRN s 44(3).

[557] See Land Use Act s 1 which gives land to state governor on trust for citizens. See also Nigeria constitution s 44(1) that systematically supports it. See further Land Use Act ss 28 – 29.

[558] S 11 states that licence shall entitle the holder, his officers, agents, workmen servants with any necessary equipment or vehicles, subject to the provisions of ss 14, 15 and 16 of this Act.

[559] The provision may stop citizens from getting justice. This is court of first instance and appeal from here should lie to Court of Appeal and Supreme Court. This calls for amendment.

The Nigeria Interpretation Act of 1964 unambiguously states that land does not include minerals.[560] It has been submitted that this was in variance with the customary and common law which made no such conception or distinction but subsumed minerals within land[561] and that which cannot be easily separated from each other. This was clearly provided by Property Act England and Wale 1925 s 205 (1)[562] which defines land "....to include land of any tenure, and mines, and minerals and subscribes to the fact that minerals cannot be detached from land as it is part of its property and should therefore be owned as such". Detail is in chapter three of this research. With theoretical principles drawn from classical and modern liberal background, the writer considers the grounds on which each side claims its rights. The researcher rejects the sovereignty argument in practice that Nigeria belongs to government of federation and so are the mineral resources. If so, there would have been no need for regional or multi-ethnicity and democratic existence but federal government without fragmentation. This has shown that the multi-ethnic makeup of Nigeria has prompted the adoption of a differentiated political community. These include national and sub-national[563] for easy administration of human and mineral resources.

By Property Law of England and Wale, ownership and its principles of perpetuity, means that the rights or control exercised over mineral oils and other resources could be passed onto who ever would succeed Her Majesty's Government or rulership in Nigeria[564] at independence. The person will control and own the oil and other mineral resources including land. It is interesting to note that under the rule of succession in international law, Nigeria has automatically became successor of Great Britain upon her independence and 'not just her region'.

The Continental Shelf Act 1964 applies the provisions of the 1934 Act to the United Kingdom Continental Shelf (UKCS) 1934 outside territorial waters. With the exception of oil, gas, coal, gold and silver; the state does not own mineral rights in the United Kingdom (UK). Generally, minerals are held in private ownership except petroleum. Following the

[560] See s 18 puts it thus; "land" includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals". Now Interpretation Act CAP 192 Laws of the Federation of Nigeria 1990. These may include trees and grasses but not including minerals.

[561] Omo Omoruyi and L Akande; 'The politics of Oil: Who owns Oil, Nigeria, States or Communities?' Nigeriaworld Publication (January 31, 2001) via http://nigeriaworld.com/feature/publication/omoruyi/oil.html accessed 20/06/2014

[562] Property Act ibid

[563] Natural resources are priceless gift of nature and they are endowed for the comfort of man's existence without any reference to any person, government or nation. Therefore, mineral resources can be owned as land by individuals, regional or state. See also Ejobowah John Boye, ibid.

[564] See Omoruyi and Akande L. op cit.

privatization of the coal industry in 1994, the ownership of almost all coal now resides with the Coal Authority who grants licences for coal exploration and extraction in the UK. Qualified ownership of land does not give title to the oil in *situ*[565] because it can be divested by drainage without consent or any liability on the part of the person causing any damage. Under the international law,[566] the Continental Shelf of 1958 establishes that any coastal state exist with sovereign right immutable over its continental shelf and can explore, exploit natural resources found therein. This was confirmed by Law of the Sea (UNCLOS) 1982.[567]

There is exception to this rule under US territorial jurisdictions on ownership of natural resources. Examples; coal, hard-rock and petroleum which is vested in public or private landowners on the surface or subsoil where mineral is located. Under this theory, mineral resources belonged exclusively to one that captures it. American court has upheld the theory in *Ellif.*[568]In Canada, private and government ownership of mineral resources exist and seen as the land in different forms across provinces.[569] Theories of these ownerships are based on the concept of economic interests; by who owns the economic interest which receives benefits from the mineral resources. The origin of economic interest as a concept is generally traced to the Supreme Court decision in *Palmer v Bender.*[570] More details of the comparison will be made in the preceding chapter.

[565] This Latin phrase translates as "on site" or "in the natural or original position or place".

[566] Article 2 Chapter II 1974 UN Charter of Economic Rights and Duties of States authorizes every sovereign state with freedom to explore minerals on their coastal regions. This was confirmed by Article 18 of 1994 of European Energy Charter Treaty 1994.

[567] See also Norwegian Petroleum Act of 1996 No. 72 which has similar definition with UK Petroleum (Production) (Seaward Areas) Regulations 1982 (as amended). Note that Ownership of oil and gas in situ in the continental shelf has been controversial. This is the oil occurring under the surface or in the subsoil of the state in original or appropriate manner.

[568] *Ellif v Texon Drilling Co* 1948 146 Tex 575 210 S.W.2d.558; the court held that the owner of a tract of land acquires title to the oil which he produces from wells on his land, though part of the oil may have migrated from the adjoining lands. See also *Stephens Count v. Mid-Kansas Oil and Gas Co*. 1923 113 Tex, 160, 254 S.W. 290, 29 ALR 566.

[569] The petroleum and natural gas ownership regime which exists in Alberta is unique in three important respects. In no other major oil and gas producing jurisdiction does a single corporate entity control such a significant portion of the petroleum and natural gas rights - EnCana owns the oil and gas beneath approximately 12% of southern Alberta (south of Township 60). See, A. Lucas, *Freehold Ownership of Oil and Gas in Introduction to Oil and Gas Law,* Canadian Association of Petroleum Landmen, (1983) p. 23.

[570] *Palmer v Bender* SC 3USTC 1026, 287 US 551 (1993). The court here held that "the right to depletion also turns up on the substantive issue of whether the owner has an economic interest in the minerals depleted by production".

Tarvene[571] has noted that landownership and associated claim to mineral ownership does not arise here as the subsea has no owner. Away from state, public, private landownership, petroleum in situ may have mankind as its owner. It has been argued that under the 1982 convention, mineral resources found in situ of deep sea has been declared to be common heritage of mankind.[572] This research holds that if subsea has no owner, mineral located thereunder may not be claimed by coastal state because mankind is human being considered jointly though, nobody in critical examination. Therefore, ownership of mineral at the situ should be examined by continental shelf boundaries to give coastal states full rights.

Any individual whose parcel of land houses minerals is denied assertion of any right to such minerals by the law. The consequence bears among oil-producing communities, Local Government Areas and states especially with the promulgation of the Offshore Oil Law. By Revenue Decree,[573] the rights of the regions/states with mineral oils in continental shelves were abrogated. Title to the territorial waters, continental shelf as well as royalties, rents and other revenues derived from petroleum operations in the States became vested in the Federal Government. Nigeria was governed through regional authority prior to her amalgamation of 1914 to independence in 1960. All regions had always exercised their rights over their land and minerals. By *AG Federation v AG Abia State*, any question on regional or state ownership of land and minerals offshore seemed to be in reverse. It is only the Minister of Petroleum Resources by virtue of the Petroleum Act, ss 2 (1), (3) and (4) or the Presidency that may grant or revoke a license or lease of oil prospecting, exploration and expropriation.

The *AG Federation v AG Abia State & 35 Ors* 2002 was on a serious dispute[574] between the federal government and the littoral states as to the seaward limit of the states regarding the revenue and allocation from offshore. In the case, the Federal Government contended that "the natural resources derivable from Nigeria's territorial water, continental shelf and

[571] Bernard Taverne. *Petroleum, Industry and Governments - 2nd Edition: A Global Study of the Involvement of Industry and Government in the Production and Use of Petroleum (International Energy & Resources Law & Policy)* (Kluwer Law International; 2 edition 2008) Pp 120 – 125 at p 120.

[572] Ibid p 120.

[573] No. 9 of 1971 amended as Offshore Oil Revenue (Registration of Grants) Act No 23 1972.

[574] See *AG Federation v AG Abia State & 35 Ors.* (2001) 7 SCNJ 1. The Supreme Court had earlier in this case stated the grievousness of the case where some defendants raised various pleadings, objections such as "there was being no dispute, misjoinder, lack of jurisdiction etc".

exclusive economic zone are not derivable from any littoral state."[575] On the other hand, the eight littoral States argued to the contrary claiming those areas as part of their respective territories and thus should benefit from the revenue accruals. This is not exclusive to Nigeria but common to federal system theories that states have control over their resources. Such legal and political activism had been seen in United States of America, Australia, Canada and other jurisdictions.[576] The US case was similar on what Nigerian Supreme Court was confronted in *AG Federation v AG Abia State & 35 Ors.*[577] The ownership of the offshore seabed and amount of resources accruing and its revenue allocation under s 162 of the constitution was raised. The contention rests in the first place on an argument that there is no controversy in a legal sense, but only a difference opinion between federal and state officials.

It was submitted by the plaintiff that control of seaward dated back to the cession of Lagos to the British monarch in 1861. By the Treaty Cession of 6th August 1861 King Dosumu of Lagos and his chiefs ceded to the British Crown Port and Island of Lagos.[578] It was submitted that it was the British colonial rule that provided the central authority that bound together all the erstwhile separate states, emirates, empires and kingdoms that were dotted all over the land today known as Nigeria. By constitutional changes,[579] the boundaries of Western and Eastern Regions were described and that of the southern boundaries of these two Regions were given in each case as "the Sea", which is the Atlantic Ocean.[580] That remains the boundaries of Nigeria, and that of Lagos, to this date. The Southern boundary

[575] Littoral states including Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers and are yet to be granted the privilege of getting extra derivation from wells located outside of the 200-metres in their territories.

[576] See *AG USA v AG Texas 1950*; *United States v California*, 332 U.S. 19 (1947), *AG New Wales v Common Wealth* [1975] 135 CLR; [1975] HCA 58, *A.G.B.C. v AG Canada* 1914. All these cases were called by Nigeria Supreme Court in *Abia Case* above.

[577] See United States decision in *AG USA v AG Texas* supra.

[578] See *Attorney-General v John Holt & Co. & Ors; Attorney General v W .B. McIver & Co. & Ors.* 2NLR at pp.4-5 cited in *AG Federation v AG Abia State & 35 Ors* supra.

[579] See: Nigeria (Constitution) Order in Council, No.1172 of 1951 - Nigeria was divided into Northern, Western (including Lagos) and Eastern Regions. By L.N 126 of 1954 titled The Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954 , made pursuant to section 5(2)(a) of the said Nigeria (Constitution) Order in Council 1951, the boundaries of the three Regions to which the Country had been divided, were given in one proclamation.

[580] See also The Lagos Local Government (Delimitation of the Town and Division into wards) Order in Council 1950 No. 34 of 1950 which put the southern boundary of Lagos as "The Sea".

of Nigeria is the Atlantic Ocean, that is, the sea. The Bight of Benin is a long inward curve on the Coast of the Atlantic Ocean.[581]

At that time, some British firms had established trading ports around the Niger and subsequently extended their operations from the middle of the Niger valley into what is now known as Northern Nigeria. The companies later merged and formed a company known as the Royal Nigeria Company which was granted a charter by the British Monarch not only to trade but also to administer the area from the middle of the Niger valley to present day Northern Nigeria. On the revocation of the charter of the Royal Niger Company on 31 December 1899, the area under its sphere of administration was renamed Protectorate of Northern Nigeria. With effect from 1st January 1900, the remaining part of the present day Nigeria that did not form part of the Protectorate of Northern Nigeria was added to the Niger Cost Protectorate which had earlier been established for the communities of the Niger Delta, to form the Protectorate of Southern Nigeria. *Attorney - General v John Holt &Co. & Ors supra* indicates that "the political history of Lagos was more chequered."

An important segment of this research is to unveil the legal unrest surrounding decision in *AG Federation v AG Abia State & 35 Ors.* This Supreme Court decision is been tackled in two angels. One is on the ownership of oil mineral and the second ground is on resources control and revenue allocation. While some authors have seen it as resolution to ownership and control contention, others saw it as chasm. AJ Ikpang[582] has hastily concluded that the suit was erroneously termed as resource control, whereas it was solely based on the determination of the seaward boundary of littoral States to determine or calculate revenue accruable to such states from offshore oil accruals. Ikpang's hurried submission is weak with due respect. It is important to note the primary constituent of the suit was interest of ownership and control of oil resources in offshore zone. It is this interest that constitutes qualification for the benefit which was the subject of the matter. The offshore oil was not '*bona vacantia* - goods without an owner'. Under s 162 (2) CFRN, 13% of accruals of oil go to the states where it is produced.

[581] By another order in Council - the Colony of Nigeria (Boundaries) Order in Council, 1913 made the 22nd November 1913 the boundaries of the Colony of Nigeria (that is, Lagos) were also described with the Bight of Benin as the southern boundary.

[582] AJ Ikpang 'The Legal Chasm between Resource Control and the Determination of the Seaward Boundaries of the Littoral States in Nigeria', Nnamdi Azikiwe University Journal of International Law (AJOL) (2011) Pp 1 - 2, https://www.ajol.info/index.php/naujilj/article/view/82387 accessed 15/10/2017.

Thus, for any state in Nigeria to qualify for this constitutional revenue sharing right, it must have land or sea where oil can be produced. The interest therefore became the ownership of offshore zone between the federal and littoral states. The states asserted that the offshore zone is within their littoral jurisdiction thus, qualified to receive the 13% of the oil revenue from the offshore while the federal argued that the offshore is not within the littoral jurisdiction. Note that like the USA, the constitution provides Nigeria as a federal system but her federal system is fragmented due to the central control regime - s.44(3) However, the constitutional provision is still the apogee. S.2(2) opines, "Nigeria shall be a Federation consisting of States and a Federal Capital Territory". That being the issue, this position was encapsulated in *nemo dat quod non habet* principle - no one may give that which does not belong to him. Again the *Cuius est solum, eius est usque ad coelum et ad inferos*[583] principle is imperative - " property law rule that property holders have rights not only to the land itself, but also to the air above and in the broader formulation the below the ground below as case of offshore seabed.

To fully understand the suit and what was sought by parties, the researcher wish to be guided by the relief statement of claim of the Federal Government in the matter. It was for "A determination by this Honourable Court, of the seaward boundary of a littoral State within Federal Republic of Nigeria for the purpose of 'calculating the amount of revenue accruing to the Federal Account directly from any natural resource derived from that state' pursuant to the proviso to s.162(2). As a follow up to the above relief, the Supreme court by the way of judgment said:" … that seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating revenue accruing to the Federation Account directly from any natural resources derived from the State is the low water mark…"

In critical assessment, the suit was for purposes of interpreting the seaward/offshore boundary of littoral states to high seas for aim to determine and calculate the revenue generation and what was to be allocated to the littoral states thereof. To determine boundary for this purpose by implication means the interest owned therefrom. As Lord Denning had opined 'you cannot place something upon nothing and expect it to stand'. The matter was placed upon an interest in seaward been contended. Note again that the decision

[583] *Hinman v Pac. Air Lines Transp. Corp.*, 84 F.2d 755, 757 (9th Cir. 1936). This doctrine is also referred as the *ad coelum* doctrine.

is been interpreted in many ways. Thus, the suit may not be out-rightly denying ownership interest in the seas' natural resources in its strict manner.

Supreme Court in its judgment decided that the seaward boundary of a littoral State within the Federal Republic of Nigeria does not extend or cover territorial waters of Nigeria. Thus, disentitling the littoral regions from revenue accruals of offshore oil. Some literatures held that by this decision, the suit was not on resource control or on who controls natural resources in Nigeria. If ownership and control of resource was not involved, what then was the subject of litigation? No wonder the decision attracted prevalent criticisms triggering the Federal Government of Nigeria to attempt political solution rather than enforcing the decision by setting up a committee which recommended to the President of a bill for the abolition of dichotomy in revenue sharing to the National Assembly. The researcher having studied various arguments and opinions could conclude that the decision 'over bloated' the central resource exclusivity and intemperance of its legal control. In Federal system, the element states control the resources found within their geographical zones. These states pay a certain percentage of revenue derived therefrom to the Federation.

Basically, resource control rests in the component states of the Federation. Therefore, the research supports Ikpang's earlier submission that Nigeria law is anti-federal and the courts have given wrong interpretation of the fact before it in the case. The government created unnecessary controversy by this suit and 'made a great moment and heavy weather where none existed'.[584] Nigerians are still in derision over this judgment as a result of the controversies it caused. It is important recommendation that the Nigeria Supreme Court revisit its decision and give proper interpretation of the law in the matter due to in-exhaustive review of what was placed before them. There is a great deal of difference between resource control and issue of sharing formula of oil revenue. Suit which bordered on the controversy whether littoral States were entitled to revenue of oil derived from offshore bed does not cover exhaustive ownership contest under review. R. Ingwe, J.K. Ukwayi and G.I. Ettah[585] noted that Sub-national regional insurgencies and agitations over resource and sharing formula characterized the federal system of government in Nigeria. The authors reasoned that the dissatisfaction of Nigeria exploitation policies on Niger Delta resulted to their demand of controlling oil resources. They concluded that the Nigeria

[584] Emphasis supplied.

[585] R. Ingwe, J.K. Ukwayi and G.I. Ettah. "The Contest for Oil/Resources in a Federal System: The Onshore-Offshore Dichotomy Case Between the Federation of Nigeria Versus Abia and the Littoral States" Bulletin of the Transilvania University of Braşov Series VII: Social Sciences Law Vol. 7 (56) No. 2 – (2014) Pp 205 - 216.

Supreme Court ruling was a confirmation of federal mineral ownership exclusive principle and only entitles littoral states to compensation as "an administrative amelioration distinct from resource ownership."[586] It is agreed that the contentious ruling has stirred up more questions than answers.

The *Abia State case* represents workings of neo-liberalisation that complements neo-liberalism and dichotomy occasioned to oil region in Nigeria. It holds that mineral and landownership belong to federal government under Nigeria laws – CFRN, LUA and PA 'promulgated by the military junta'.[587] In giving weight to exclusive ownership model, the court gave some geographical and oceanographic features developed by international law as it affects Nigeria's interests. It is noteworthy that the suit and decision in *Abia case* was not just based on s.162 regarding sharing formula. The court was exhaustive in holding that the federal government has total ownership and control of land or mineral resources in Nigeria and that the offshore zones are owned by the federation thus its constituents. This is because it latter included seaward boundaries of littoral states which is helpful in computing the quantity of oil revenue they could derive from the federal government.[588] No state without oil in Nigeria is entitled to 13% revenue of oil except those with oil. This determines the derivative formula under s.162, the ground the decision was based.

Conclusively, the primary aim of the littoral states for the suit appears as an effort to disclose the underlying politico-economic-cultural phenomena of pre-colonial and post-colonial factor in the administration of mineral resources in Nigeria. This was pointed towards the harmonizing doctrines of the 'neo-liberalism and neo-liberalisation'[589] of the Niger Delta people, their oil and environment as the most prevalent. The littoral states attempt was to assert ownership of offshore zones that would have qualified them for revenue benefits under s.162. Another factor was the disproportionation of large shares of funds of about US$100 million per day from oil for the past five decades by the federal government. Through by the instrumentality of the Petroleum Act, individuals were turned into owners of oil wells/fields. The processes are been masqueraded by federal government. Some academic emphasis and commentators have supported the assertion that *"where there is no justice, there can never be peace"*.[590] This exploitation destroys the oil

[586] R. Ingwe, J.K. Ukwayi and G.I. Ettah ibid P 206.
[587] Emphasis supplied.
[588] In her territorial waters, exclusive economic zones, continental shelves, low water mark, the rather involved concept of archipelago islands of the Cross River State, and related issues see R. Ingwe et al ibid.
[589] Ibid at P 207.
[590] See Uviasuyi, P.O., Uwadiae J.: *The dilemma of Niger-Delta region as an oil producing states of Nigeria*. In: Journal of Peace, Conflict and Development, (2010) Pp. 110-126 cited in R. Ingwe et al at p 209.

region and its environs. Under this exclusive control regime, the region has witnessed series of self-determination and declarations by its ethnic nationalities in post-colonial Nigeria. Therefore, the above decision may not be ending the contention so soon without reversal, restructure and legal reform.

It is true that there is a difference opinion between federal and states in this matter but, there is far more than that. The point of difference is on who owns, or has paramount rights and power over several thousands of square miles[591] of land under the ocean offshore coast of Nigeria littoral states. The difference claims of federal and state was on who has superior right to take or authorize the taking of the oil and gas underneath the land. Such concrete conflicts constitute a controversy in the classic legal sense. These are the very kind of differences which can only be settled by agreement, arbitration, restructure, or judicial action[592] but the Supreme Court failed to conceive it. As noted in *Abraham Ors v Olurunfumi,*[593] "ownership implies the fullest amplitude of right of enjoyment, management, and disposal over property". He will not be subjected to a third party or anyone's right. An owner of a property has full right of ownership, alienation or disposition. Littoral states[594] had disagreed with federal government and claimed that their respective boundaries extended beyond low-water to territorial water into the continental shelf and exclusive zones. They contended that the natural resources accrued there came within their territories and that they were entitled to "not less than 13% allocation as provided by s 162.

The resource is well-known factor in triggering conflicts and litigations in modern societies. Over the years, the struggle for possession and control of natural resources has been the remote and the immediate cause of great wars and human tragedies in Nigeria Niger Delta where these resources are been explored. The idea of ownership can be derived from the civil law concept of 'dominium'. Greatest right in property is to "use and dispose of a thing in the most absolute way in early Roman texts." This concept of 'dominium' is the "ultimate right, that which has no right behind it."[595] "Dominion" carries precisely those overtones in the law which relate to property, and not to political authority.

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[591] See P. 332 U. S. 25 above.

[592] *United States v California supra where d*ecision was made for the national interest of USA.

[593](1991)1 NWLR (165) 53 at 74.

[594]See *AG Federation v AG Abia State supra*

[595] See Bryan Clark, "Migratory Things on Land: Property Rights and a Law of Capture", 6.3 Electronic J. Comp. L. 2, (October 2002), pp 2 – 3. http://www.ejcl.org/63/art63-3.pdf accessed 21/2/2016.

Dominion, from the Roman concept 'dominium', was concerned with property and ownership,[596] as against 'imperium', which related to political sovereignty.

One may choose to say, that a country has "national dominion" over navigable streams. But the power to regulate commerce over these streams, and its continued exercise, do not change the 'imperium' of such country into 'dominium' over the land below the waters.[597] Ownership, as understood under civil law has been recognized, to some extent, under common law.[598] In *United States v California*,[599] the fact that the coastal line is indefinite, and that its exact location will involve many complexities and difficulties presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on this Court by Article III, s 2, of the Constitution.[600] The belief that local interests are as predominant as constitution requires state dominion over lands under its land-locked navigable waters finds some argument for its support.[601] Distinctively, the right of ownership under common law is absolute right over one's property.[602]

Under s 162, there is issue on 13% allocation formula from federal to states with oils. S 162 (2) provides that "the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources". This is determined from resources accruing from each state and this case, the oil in the Niger Delta Nigeria. Impliedly, this generated issue of land (seabed), environment, oil ownership and control. The littoral states contended ownership of the sea zones to be able to benefit from the aforesaid 13%. Here, the Supreme Court, per M.E. Ogundare (J.S.C) gave the federation total control. This was another method to claim ownership of offshore seabed land and its resources. The court relied on a United State of America decision of *United States v State of California*[603] where the US Supreme Court, per Black J, said: "...the contention rests in

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[596] Page 332 U. S. 44

[597] *United States v California* supra. The federal government should have been restricted to political sovereignty and not right to dominate all mineral resources.

[598] Ugo Mattei, *Basic Principles of Property Law: A Comparative Legal and Economic Introduction* 77 (2000).

[599] See Pp. 332 U. S. 25-26. U.S. 19 (1947)

[600] *United States v California* ibid.

[601] *United States v California* ibid.

[602] Mattei ibid acknowledged: "Common law countries have been traditionally cautious to emphasize the extent of the owner's powers, always employing the idea of reasonableness to limit him or her in the interest of his or her neighbours. It is of no surprise therefore that the most important contribution of Anglo-American legal scholarship to property law is the metaphor of the bundle of rights. This clever metaphor defines ownership of property as a bundle of rights the owner enjoys over a something he owns." See Clark, *ibid*, at pp 2 - 3.

[603] 332 US 19, 24-25; US Reporter 1658, 1661.

the first place on an argument that there is no case or controversy in a legal sense... It is true that there is a difference of opinion between Federal and State officers. But there is far more than that…"[604]

4.3 CONSTITUTIONAL PROVISIONS FOR OIL REVENUE GENERATION AND DISTRIBUTION IN NIGERIA

Ownership of natural resources and control under a federal system have faced serious legal and political activism especially the quest for component littoral states hegemony respecting resources deposits within their territories' offshore, its seabed and adjacent continental shelves. The Nigerian Supreme Court was confronted with this issue in *AG Federation v AG Abia State & 35 Ors*. The Supreme Court in the instant matter reaffirmed the federal government sovereignty, ownership, control and jurisdiction over the resources. It followed therefore that this decision has a 'deep-seated implications' for municipal maritime laws, international laws, seaward boundary, revenue allocation, inter-governmental relationship.[605] Thus, not a panacea for national cohesion or peace, security, and strength of the country's federal system.

Though, the law vests ownership of natural resources on federation, yet, it provides a revenue formula where states with these resources are entitled to percentages of revenue accruing directly to federal account from the extraction. This is known as 'Derivation Formula'.[606] As held in *Abia case* "the seaward boundary of a littoral State called upon to determine was a matter of law. What becomes factual, and on which evidence will be required to prove, is the actual location of that boundary".[607] The court relied on *Pioneer Plastic Containers Ltd. v Commissioners of Customs and Excise*[608] that "where there are no issues of fact on the pleadings, no evidence needs be adduced." There is no Nigeria law that provides for an answer to the above legal question. This lacuna forced the court to take a voyage of discovery to US. However, there is need to fill up this gaps under the Nigeria

[604] 295, U.S. 463 55SC 789, 79 L.Ed. 1546. Note that the difference involves the conflicting claims of Federal and State officials as to which Government, State or Federal, has a superior right to take or authorise the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be taken by or under authority of the State

[605] Between local authorities/communities, states and federal government. See S. A. Ogba, "Nigeria Offshore Seabed: The Challenges of Ownership and Resources Control", American Journal of Humanities and Social Sciences Vol. 2 No 1 (2014) pp 13 – 18 at p. 14.

[606] See again CFRN s 162(2) supra.

[607] S. A. Ogba ibid at p 14.

[608] (1967) Ch. D. 597.

legislations where these shall be specifically spelt out. The research will make its recommendations in chapter seven of this work.

There are many laws and regulations guiding oil and gas extraction, ownership and revenue allocation formula in Nigeria. These include, the Petroleum Act of 1969 and Petroleum (Drilling and Production) Regulation 1969, British Mining and Oil Regulations in Colonial Nigeria 1914, Petroleum Tax Ordinance 1958 and Mineral Oil Ordinance 1914.[609] Others are Decree no. 24, of 1999[610] and Land Use Act 1978 was Decree No. 6, of 1978.[611] These have not been changed, reviewed or repealed to represent the public opinion and federal system tenet on petroleum control management in Nigeria. It is undisputable that when law lacks equal and democratic representation, it loses its constituents' intents. Its impacts on oil management and exploration will become autocratic and may rise to conflicts and litigations. This is apparent on Nigeria laws and regulations.[612] S 16(1) (a) and (b) of the constitution states, "the state shall within the context of the ideals and objectives for which provisions are made in this constitution; (a) harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy".

From the *Abia case* decision, it is noted that Nigeria has a zig-zag and fragmented revenue allocation sharing formula with respect to the derivation principle. This gap opened the contention between the parties in the instant case. With these inconsistencies, the court determined the seaward boundary of a littoral state within the Federal Republic for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that sea zones pursuant to the said s.162(2). It held the boundary to be the low-water mark of the land surface or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the state. This takes away all natural resources from states or local authorities to the

[609] No. 17 of 1914

[610] Now known and called the Nigeria Constitution 1999. This was given to the civilian government by the military in eve of swear in ceremony in May 1999.

[611] These were all creations of military decrees in Nigeria thus lack democratic ethos.

[612] The following Nigerian are major petroleum legal frameworks on ownership, management and control of the resources. They comprised the Constitution of Nigeria 1999 (as amended), Land Use Act; Petroleum Act, Petroleum Technology Development Act 1973, Oil pipeline Act, Oil Terminal Dues Act of Nigeria 1990, Petroleum Profit Act, Oil in Navigable Waters Act, Offshore Oil Revenue Act, Exclusive Economic Zone Act 1971, Territorial Water Act, FEPA Act, EIA Act, NESREA Act, Oil Minerals Act, Interpretation Act (1963) (now Interpretation Act of Laws of the Federation of Nigeria (1990).) Nigeria Oil and Gas Industry Content Development Act of 2010, the ongoing debated Petroleum Industry Bill etc. We shall therefore take some of these laws one after another.

federal government. It made private property rights unenforceable as it redesigned the boundaries of states of Nigeria. The court profoundly noted:

> There appears to be no sufficient authorities for saying that the high sea was ever considered to be within the realms, and, notwithstanding what is said by Hale in his treatises De Jure Maris and Pleas of the Crown, there is a total absence of precedents since the reign of Edward III, if indeed any existed then, to support the doctrine that the realm of England extends beyond the limits of counties.

Like the Nigeria constitution, the Mineral Ordinance[613] of England, s 1 provides: "the entire property and control of mineral and mineral oils, in, under, or upon any land in Nigeria, and of all rivers, and water courses throughout Nigeria, is vested in the Crown." This metamorphosed to the s 44(3) of Nigeria constitution and s.1 of the Petroleum Act. Although, there are various laws governing oil exploration in Nigeria, but principally, the present regime is regulated by the Petroleum Act and Petroleum Drilling and Production regulations 1969.[614] These laws have marginally changed the characters of their colonialism but the intent had remained the same. The constitutional Framework of Nigeria structured her federal states[615] in order to achieve common-front through legislations. This is yet to be seen in practice.

Nigeria constitution s 162(1) establishes a Federation Account and provides that all natural resources revenues collected by the Government of the Federation, with a few exceptions not relevant to the case in hand shall be paid into it. S 162(2) of the Constitution empowers the National Assembly to determine the formula for its distribution. The subsection provides for allocation formula principles on population, equality of States, internal revenue generation, land mass, terrain as well as population density. It provides that "the principle of derivation shall be constantly reflected in any approved formula as being not less than 13% of the revenue accruing to the Federation Account directly from any natural resources." The proviso to the subsection entrenches, that the principle of derivation in any formula, the National Assembly may take. For a State to qualify for the 13% allocation, the natural resources must have come within the boundaries of the State.[616]

[613] Mineral Resources Ordinance ibid.
[614] now Cap 10 LFN 2004
[615] See CFRN s 2 provides for federating units.
[616] See generally s 162 supra.

One of the few departures from the 1979 constitution to the 1999 was the return to the federal system of government previously entrenched in the 1963 republic constitution and colonial constitution of 1947. This provided for a minimum percentage of revenues from oil and gas to the producing states.[617] Meanwhile, the 1979 constitution had left the issue entirely to the national legislature as just one of several factors to be considered in sharing revenues among the various states making up the Nigeria federation. But in a reversed manner, the 1963 constitution[618] omitted issue of land and public ownership in the hands of the sub-national units. Interestingly, it guaranteed 50% of oil revenues to the regions as set out in its s 141. The section provided that there shall be paid by the federation to the Regions at each quarter sums equal to the following fractions of the amount standing to the credit of the Distributable Pool Account at that date, that is to say:

a) To the Northern Nigeria, forty ninety-fifths;
b) To Eastern Nigeria, thirty-one ninety-fifths;
c) To Western Nigeria, eighteen ninety-fifths;
d) To Mid-Western Nigeria, six ninety-fifths.

The 1960 and 1963 constitutions s.141[619] gave the states producing oil and other minerals 50% of the accrual benefits. 1999 constitution reduced it to 13% by s 162(2). The 1985 Draft Constitution suspended by the military government had similar position on this matter. S 17(2) (c & d) provided that by consequent, material resources of the nation are to be "harnessed and distributed equitably and judiciously to serve the common good of all the people". The question that would be asked here is as to the enforceability of the foregoing guarantees and undertakings by the government through the law. The enforceability of the Fundamental Objectives and Directive Principles of State Policy[620] is addressed at this juncture. While the same constitution by s 6(6) (c) consistently makes this purpose impossible.

The constitution takes a central control model approach and gives the federal government both ownership and legislative control of petroleum and other mineral resources while leaving land ownership in the hands of the state governors.[621] This costly omission is the worry the country has been undergoing over the years. This research proposes that the latter provisions conflict with features of true federalism. We argue further that the former

[617] S 162 (2) *supra.*
[618] Constitution of the Nigeria 1963 came when Nigeria became a republic three after her independence.
[619] See also s 140 on royalties and rent earlier reflected in the 1960 constitution s.135.
[620] See generally 1999 constitution chapter 2 and particularly s 20.
[621] See LUA s 1. See CFRN s 315 above.

law was ideal for an emerging democracy operating a federal constitution. Where this subsists, the research notes the 13% percent guaranteed being miniature and ought to be augmented to a figure better than 50% provided by 1963 Constitution[622] to support better productive devolution of power especially on resources control and related matters.

In 1979, over 90% of oil revenues and all other federal sources revenue were deposited into the Federation Account and allocated according to a formula that gave the federal government 75%, state governments 22%, and local governments 3%.[623] During this period the federal government assumed responsibility and fixing rights of rates of income tax including tax on oil while in principle, some taxes remained state taxes. Revenues of the Derivation Account are based on a proportional basis and equal to the percentage of oil produced by each of the oil producing states and distributed accordingly. Oil producing states believe that 13% is from all oil revenue while the federal government maintains that it is only 13% of the revenues obtained from oil produced "on shore,[624] Federal government now takes full possession of mineral from offshore without 13% being given to littoral states. This was the primary cause of action in *AG Federation v AG Abia State & 35 Ors.* Littoral states are now fully excluded from the Derivation Account of the revenues obtained from "off-shore" oil. The present formula is similar to the 1982 formula in terms of the total flow to the centre, but the states now receive less revenue than it had during the last civilian government, while the local governments receive more'.[625] Federal allocation to states is based on five criteria:

i. Equality (i.e. equal shares for all states),
ii. Population,
iii. Social development,
iv. Land mass and terrain and
v. Internal efforts at generating own revenue.[626]

S 162(7) empowered the National Assembly to prescribe how each State shall pay Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as it deems fit. Where the National Assembly

[622] See s 141 ibid and how the recent national conference recommendation had gone is still unknown.
[623] See ss 149, 150 and 151, particularly at s 149 of the law.
[624] S.141 ibid
[625] Allocation formula has gone from 22% under 141 above to 13% in s 162 of the 1999 constitution.
[626] See generally Joel D. Barkan, Alex Gboyega, and Mike Stevens ibid. traditionally, the bulk of the allocation or control of seventy percent is on basis of equality and population.

should prescribe on how or what the State House of Assembly should abide by under this regime is faulty and inequitable. S 162(8) provides that the amount standing to the credit of Local Government Councils of a State shall be distributed among the local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State. State legislative power is subjugated to the National Assembly even though the later tries to create ambiance for its independence. There will be no independent House of Assembly within the clause. The Legislature involved in s 162(3), (5) and (7) is the national assembly while state legislative houses are involved in s 162(8). There may be usurpation of the power of the State Assembly under veil of monitoring or superior authority.

There is difference between s 162(5) and s 162(8). While s 162(5) talks about allocation, s 162(8) talks about distribution. The point should be made that the only constitutional function of the National Assembly under s 162(5) is to allocate to the States the amount standing to the credit of Local Government Councils and not verse versa. It is the constitutional function of the House of Assembly of the State to distribute equitably the amount due to the state and legislative on state's matters. To put it in a clearer and more precise language, s 162(5) stops at allocation, and s 162(8) picks up from s 162(5) to distribute the money[627] among the three tier of government.

Unlike I963 Constitution, the Concurrent Legislative List under the 1999 Constitution is no longer a free shopping centre[628] for both the Federal and State legislators. It has clearly elucidated those items that the National Assembly can naturally legislate and to the houses of assembly of various states of Nigeria as it relates to s 4(7) (b) of the constitution. S 4(4) (b)) is an omnibus and generic provision anticipating what is not covered or contemplated by provision of s 4(2), and s 4(4)(a) of the constitution. By s 162(3), the National Assembly (NA) is authorized to distribute any amount standing to the credit of the Federation Account among the Federal, State and the Local Governments on such terms

[627] S 162(6) does not provide for the Legislature. See *AG Abia State & 3 Ors v AG Federation & 35 Ors*. Note that reading the provisions of the constitution ss.7 (6)(a) and 162(5) and (7)), brings out some fiscal affinity or relationship between the two sections. This applies to s 7(6) (b) and s 162(8).

[628] *AG Abia State & 3 Ors v AG Federation & 35 Ors* (2005) where an order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever, also including its Minister of Finance or howsoever from deducting or making deductions from the plaintiff's share of the Federation Account except as determined by the decision in *Attorney General of the Federation v Attorney General Abia State & 35 Ors* (No.5) (2002) was sought by these states. Note again that the Supreme Court in *AG Abia State & 35 Ors v AG Federation* (2002) was centred on conflicts and controversies surrounding control of mineral resources in Nigeria and matters related thereto pursuant to s 162 of the Constitution while 2005 was on release of money.

and in such manner as the Legislature may prescribe.[629] As a law making body, the NA will carry out the powers conferred on it in s 162(5) by enactment of an Act.

S. 4(3) of the constitution looks double-barrelled in the sense that it deals with both the National Assembly and Houses of Assembly of the States. By this subsection, the power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in the Constitution, be to the exclusion of the Houses of Assembly of States of Nigeria. S 4(3) is consistent with s 4(2). This vindicates s 4(7) supra; a subsection I will take anon. The summary, are the legislative powers of the National Assembly which should constitute better federated structure to Nigeria. The main enabling provision, which is the counterpart of s 4(2), is s 4(6) of the constitution. It reads: "The legislative powers of a State of the Federation shall be vested in the House of Assembly of the state". As it is, s 4(6) is more precise than s 4(2). But s 4(7) provides for similar situation in respect of law making power in the State or any other part, as the subsection relates vaguely to s 4(2).[630]

Whether the National legislative powers under s 4(2) is extended to any part, which include the States and whether under s 4(7) the state power is extended to any part thereof which included the Local Government Councils of each State seemed to be unsettled by the above provisions. The above provisions have begged to solve the intrigues in *Attorney General Abia State & 3 Ors v Attorney General of the Federation* & 35 Ors *supra.* What makes a federal system of government workable democratically is the indubitable independence of the state to control their resources as witnessed in the US and Canada. The above sections deprived the state assembly equitable rights to legislate on issue relating to oil or other mineral resources. A reversal of the provisions of the 1963 constitution which gave states independence is proposed. In a federated setting like Nigeria, it is presumed by this theory. The National Assembly needs not to have authority over the State Houses of Assembly on issue of law making and control over states or regional resources. Note that the Court in *AG Abia State & 3 Ors v AG Federation & 35*

[629] Therefore, by s 162(5), the amount standing to the credit of Local Government Councils in the Federation Account shall be allocated to the States for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly. See again *Attorney General Abia State & 3 Ors v Attorney General of the Federation & 35 Ors (*2005) authorising federal to release their allocations.

[630] S.4(7) above.

Ors, declared Monitoring (Revenue Allocation to Local Governments) Act, 2005 provisions null and void. This supports state autonomy.

Then Monitoring Act was the bone of contention in this matter and same were passed by the National Assembly and assented to by the President on the 12th day of April 2005.[631] Suffice to say that this Act contained ten sections.[632] The Court in the case declared ss I, 2, 3, 7 and 9 of the Monitoring Act 2005 null and void being inconsistent with the provisions of the constitution by ss 4, 7, 162(5), (6) and (8) (f). *AG Federation v AG Abia State & 35 Ors* (2001) needs to marry this decision to resolve Nigeria federal system illness. Absence of economic and mineral resources autonomy will leave any federal system theory cynical and 'monocratic'. State autonomy from federal control is the 'monosodium glutamate'[633] of a federal system or aristocratic democracy.

The Court was right to hold provisions ss 1(1) and 7(1) of the Monitoring Act inconsistent with s 162(6) and (8) in so far as the Act sought to regulate the manner the amount allocated to the states for the benefits of its local government councils[634] were to be distributed. Ss 1(2), 2 and 3 of the Monitoring Act in so far as they sought to subject the States of the federation to the authority of the National Assembly and not the State Houses of Assembly offended the spirit and letters of the Nigeria constitution. S 44 (3)[635] of the constitution needs to be amended in line with this decision. It is unconstitutional for an Act of the National Assembly to impose duties or obligations on State Governments[636] under a

[631] *AG Abia State & 3 Ors v. AG Federation & 35 Ors supra.*

[632] See ss 1 – 10.

[633] The autonomy of a State or Region under a federal system of government to control its resources will sound as compound which occurs naturally as a breakdown product of democratic proteins and is used as a flavour enhancer in developing a wider range and stable economy.

[634] *Attorney General, Ogun State v Attorney General, Federation* (2002) 10 NWLR (Pt 798) 232.

[635] See *AG Federation v AG Abia State & 35 Ors (2002).* This research calls for Supreme Court of Nigeria to overrule its decision in this case. See generally the following cases - *Attorney-General, Ogun State v Attorney-General of the* Federation (2002) 18 NWLR (Pt. 798) 232*; Attorney-General of Lagos State v Attorney-General Of the Federation* (2003) 12 NWLR (Pt. 833) 1*; Attorney-General of Ogun State v Attorney-General of the Federation* (1982) SC 1; *Attorney-General of Abia State v Attorney General of the Federation* (2002) 2 NWLR (Pt 763) 264*; Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt. 772) 222 *and MacFoy v UAC* (I961) WLR 3.

[636] *Attorney-General of Ogun State v Attorney-General of the Federation* (2003) 12 SC 1*; Attorney-General of Lagos State v Attorney-General of the Federation* (2003) 6 SC (Pt. 1) 61*; Bailey v Diexel Furniture Co.* 259 US (1921) at pages 449 to 453 and 450*; Attorney-General of Ogun State v Attorney-General of the Federation* (1982) 13 NSCC 1.

federal system in matters within the legislative competence of the state Legislature.[637] Any law which is inconsistent is to its inconsistency null and void and should be exorcised.[638]

At international law, it was observed that the baseline for measuring the breadth of the territorial sea is the low water mark along the coast.[639] Article 3 of the Geneva Convention on the Territorial Sea and Contiguous Zone 1958 provides thus; "Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast as marked on large-scale charts officially recognized by the coastal state." Even though this was provided, the judgement skeletally noted this and failed to state if such law is domesticated in Nigeria. The Nigeria laws need review and amendment where needed and repeal where possible. Even though the decision had been made, the researcher is still actuated by the level of controversy and clamour for resources control by these states. This brought to forefront the need to determine and spell out constitutionally the allocating formula for revenue derived from territorial sea, exclusive economic zone and continental shelf within Nigeria as contentious resources are located at seabed of the offshore.

In determining Nigeria Offshore Seabed, a critical legislative assessment is required. The Nigerian Offshore Seabed consists of the Territorial Waters, Continental Shelf and Exclusive Economic Zone.[640] But the low-water is the base point from which the breadth of the offshore seabed is measured. The Supreme Court was emphatic on this, 'the low water mark of the seaward boundary is the base point for measuring the offshore seabed'.[641] The Supreme Court in the instant case was emphatic on this, noting that, 'the low water mark of the seaward boundary is the base point for measuring the offshore seabed'.[642] The Territorial Waters Act 1971[643] made a reference that, "the territorial waters of Nigeria shall for this purpose includes every part of the open sea within twelve nautical miles of the coast of Nigeria (measured from the low-water mark) or seaward limit of inland waters."

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[637] This was opined by the court in *AG Federation v AG Abia State* supra

[638] And where it occurs that any section of the constitution appears against public policy, such law needs to be repealed too. See ss I, 2, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 which were said to be inconsistent with the provisions of ss 4, 7, 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and were held null and avoid *in AG Abia State & 3 Ors v AG Federation* (2005) supra.

[639]See the Geneva Convention on the Territorial Sea and Contiguous Zone. 1958 Article 3.

[640]E. Egede. "Who owns the Nigerian Offshore Seabed: Federal or States? An Examination of the *AG Federation v AG Abia State & 35 Ors"*; The Journal of African Law, Vol.4 (1)(2005) p. 5.

[641]See *AG Federation v AG Abia State & 35 ors* ibid.

[642] See again *AG Federation v AG Abia State & 35 Ors* ibid.

[643] 1971, S. 1

By this proviso, there is no doubt that if Nigeria seaward limit of the low- water mark is to be the baseline for measuring the offshore seabed. On the international prescription, the seaward limit of the different maritime zones are 12 nautical miles for the territorial sea, 24 nautical miles for the contiguous zone and 200 nautical miles for the exclusive economic zones.[644] But the Continental Shelf extends to the outer edge of the continental margin, or to a distance of 200 nautical miles where the outer edge of the continental margin does not extend up to that distance. Article 76 paragraphs 4 and 6 of the convention provides that when the margin extends beyond 200 nautical miles, the outer edge limits of the continental shelf shall be determined by a complex formula.[645] Nigeria has in accordance with the UNCLOS, established five maritime zones. These include:

a) Internal waters.
b) Territorial sea (reduced from 30 nautical miles to 12 nautical miles by the adoption of the Territorial Waters Amendment Decree (1978).
c) Contiguous zone of 24 nautical miles.
d) 200 nautical miles exclusive economic zone.
e) The Continental Shelf as provided under the petroleum Decree (1969, No.51).

The continental Shelf of Nigeria means 'the seabed and the subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth not greater than 200 meters below the surface.[646] The 1958 Convention provides the only sovereign rights exercisable by Nigeria over the super-adjacent waters of the continental shelf area under discussion as the ones connected with rights of exploitation and exploration of the shelf's sub-marine areas as allowed.[647] Upon a dispassionate review of the provisions of United Nations Convention on the Law of the Sea (1982), on strength of Articles 2,3,55,57,76,77 and 78 UNCLOS and upon court's critical assessment, it arrived that "the offshore, maritime zones within the national jurisdiction of Nigeria were not part of the territory of Nigeria but some kind of extra-territorial terrain which international law conceded to

[644] See United Nations Convention on the Law of Sea, 1982: Articles 3, 33 and 37.
[645] Note that the outer limit of the aforementioned maritime zone is measured from the baseline of the low water mark. UNCLOS provides the rules on the baselines from which the breadth of the offshore seabed is measured. See particularly UNCLOS, 1982: articles 5,6,7,9,10,11,12,13,14,16,47 and 121).
[646] E. Egede, "African States and Participation in Deep Seabed Mining: Problems and Prospects"; the International Journal of Marine and Coastal Law, (2009) p 684.
[647] See generally Articles 2,3,55,57,76,77 and 78 of United Nations Convention on the Law of the Sea (1982).

Nigeria to exercise certain jurisdictional rights (Territorial Waters Act 1971)." Accordingly, Ogundare, J.S.C. delivering the judgment[648] opined:

> The sum total of all I have been saying above is that none of the territorial waters act, sea fisheries act and exclusive economic zone Act has extended the land territory of Nigeria beyond its constitutional limit, although the acts give municipal effect to international treaties entered into Nigeria by virtue of its membership, as a sovereign state, of the comity of nations. These treaties confer sovereignty and other rights on Nigeria over certain areas of the sea.

As earlier acknowledged, the federal government upon winning the legal battle in *Abia case* set up a presidential committee to find a political solution to crisis emanating from the decision. This was because of the far-reaching socio-political and socio-economic implications of the judgment in the states involved. More importantly, the opinion of Lord Cockburn CJ had in *R v Keyn*[649] is illustrative where he held:

i) "The inconclusive evidence as to the precise terms of the alleged rule of customary international law; and

ii) The constitutional consideration that adoption of new law (a 3 mile territorial sea) was a matter for parliament rather than the courts."

It is no longer doubted that the seaward boundary of the littoral states is the low water mark of the sea front or the seaward limit of inland waters. The Court has affirmed this position in the instant case giving the exclusive control and jurisdiction offshore zone and seabed to the federal government of Nigeria. Notwithstanding what appears a huge legal victory to the federal government, the national assembly has passed into law Offshore/Onshore Dichotomy Abolition Act (2004) to put to rest the quest. The Act allows littoral states to have some interest (derivation) in offshore natural resources located within 200 meters water depth Isobaths. This is similar to the position adopted by the United States government where legislative backing was sought by the federal government in spite of its legal victory on jurisdiction over offshore natural resources to allow states to exercise some interest over offshore natural resources.[650] The entire law appears as a political whitewash by the federal government to woo and take focus of the control quest. It has not abolished dichotomy by any honest reasoning nor taken away the ghost of *Abia case* as the

[648] *A.G Federation v A.G Abia State & 35 Ors (*2002).

[649] *R v Keyn* (1876) 2 ExD 63.

[650] Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice*, Benin City: New era publication (2004) p 21. Note that the extent of the enforcement of this Offshore/Onshore Act in Nigeria is in doubt.

amendment efforts have not been seen through Allocation of Revenue (Abolition of Dichotomy in the Application of the principle of Derivation) Act 2004.[651]

Nigeria has dropped her previous farm activities (palm oil in the East, groundnuts in the North and cocoa in the West) to oil and gas exploitation. Oil and gas remains almost the only means of the country's survival and GDP strength with closed attention to the sector by both federal and regional governments. No doubt, oil is now Nigeria's major source of wealth, power and object of conflicts.[652] The contrast in real life is between original dream of placing it in the hand of the countrymen or regional governments the rights to the natural resources found within their territorial boundaries that had remained much starker. As we consider the nature of petroleum ownership and control in Nigeria with implications of her legal theories, it will be imperative to examine briefly the principles of permanent sovereignty over natural resources locally and internationally as 'vehicle for its glorification with a handful of rules'.[653]

As noted earlier, the question of control over oil resources is an established fact under federal constitutional system. The quagmire remains the manner Nigerian federal system evolved. Prior to the present democratic regime, there had been unequivocal sensitization of the citizenry on the uniqueness of federal system. But, due to the constant military interruption of the constitutional system of government, the system became malfunctioned. A measure for a solution has been sought when it was noted that there were some options facing Nigeria and her citizens to withdraw from drawing into faulty federal system. It was submitted that the country can make it better though with some forms of 'overwhelming externals' or as a result of 'internal political convulsion' and 're-negotiation through political national conference'.[654] Such opinions failed to establish how strong such conference could be without legal backing. Such negotiation could only pass the test of utopia community without strong legislations. This is what the researcher is reconciling.

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[651] It looked like good news on the surface but it seems as wool in the eyes of the resource control advocates.

[652] Cyril I. Obi, *Oil and Development in Africa: Some Lessons from the Oil Factor in Nigeria for the Sudan*, DIIS Report (2007) 8. P. 9; where the author was showing the kind of challenges that confront multi-ethnic African especially Nigeria as oil-state that seeks to use oil wealth as a catalyst for fostering national unity and development. See also G Wurthmann, *Ways of Using the African Oil Boom for Sustainable Development, Tunis, African Development Bank* (ADB), Economic Research Working Paper Series, No. 84, (2006).

[653] Duruigbo Emeka, "The World Bank, Multinational Oil Corporations, band the Resource Curse in Africa", Journal of International Law, Vol. 26, Iss. 1, Art.1, U. Pa. J. Int'l Econ. L. (2005) pp 1-5, 25 – 33.

[654] Omoruyi Omo op cit. Note that the system came through external colonialism between the 1940s and 1960s. Therefore, engaging the oil regions, re-negotiation of the federal system approach for possible devolution and backup it legally is desirous to boast Nigeria co-existence and resources ownership pedigree.

4.4 LOCAL COMMUNITIES' INTERESTS

The local community of oil zone is the Niger Delta. The region covers an area of "70,000 Km^2 of marshland, creeks, tributaries and lagoons that drain the Niger River into the Atlantic at the Bight of Biafra".[655] It has population of over 30 million people,[656] with mostly rural dwellers majoring in fishing and farming. The biodiversity of the Niger Delta is very high with various classes of plant and animal.[657] The region has huge geopolitical, ecologic and economic importance in Nigeria. It is the hub of Nigeria oil and gas industries.[658] It consists of nine states with divergent customs.[659] The region is witnessing constant conflicts on how the oil is being exploited, controlled and managed. Impacts of oil exploitation are associated with recent degradation of the natural environment, pollution and low fishery and agricultural productivity.[660] It is responsible for oil facilities vandalism, insecurity of lives and property threatening livelihood in the zone.

The oil region demands for right in the control and management of the oil.[661] This local communities' interest is one of the major issues omitted in the 1999 constitution. Various states and communities of Nigeria with oil and gas have been contesting control and management of the resources, demanding to have control over what is beneath their lands. Local communities are the immediate victims of negative impacts of oil exploration, rights made non-justiciable under the provision of the law. The present constitution was vague on issue of the citizens' welfare, regional cohesion and social contract. It makes economic, social, educational and environmental objectives non-justiceable.[662] Thus, no citizen has right to claim or litigate it in the court as held by the Supreme Court in *Gani v Abacha* supra as it falls within the Fundamental Objectives and directive Principles of State Policy – Chapter II. While losing mineral rights, the region has not right to demand for good environment.

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[655] E. E. Etim et al p 89 ibid.

[656] National Population Commission of Nigeria Poublication. 2006 Population and Housing Census of the Federal Republic of Nigeria: National and State Population and Housing Tables; Priority Tables Vol.1. Abuja: NPC (2009).

[657] World Bank. Defining an Environmental Development Strategy for the Niger Delta. (Washington, DC: World Bank 1995).

[658] E. E. Etim et al ibid.

[659] Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Ondo and Rivers. Culturally, the region consists of the following ethnics: Ijaw, Urhobo, Efik, Ibibio, Ogoni, Edo, Yoruba (mainly Itsekiri and Ilaje) and the Igbo [16].

[660] E. E. Etim et al p 89 ibid.

[661] Note that UN Resolution No. 626 (vii) Dec 1952 gives private rights to national resources.

[662] See ss 16, 17, 18 and 20 of the constitution and how particularly s 6(6)(c) of the constitution.

FIGURE 3: MAP OF NIGER DELTA REGION, NIGERIA

SOURCE: E. E. Etim et al. "Water Quality Index for the Assessment of Water Quality from Different Sources in the Niger Delta Region of Nigeria" (Scientific Academic Publishing, Vol. 3 Iss 3 2013) Pp 89-95. http://article.sapub.org/10.5923.j.fs.20130303.02.html Accessed on 24/6/2016.

Nigerian Oil and Gas Industry Content Development Act 2010 was signed into law on 22nd April 2010 as cumulative result of decades attempts to guarantee and provide local value and maximize benefits to Nigerians in the industry. The Act provides for the development of Nigerian local content in the Nigerian oil and gas industry, Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content and for other related matters. S.1 provides, "notwithstanding anything to the contrary contained in the Petroleum Act or in any other enactment or law, …this Act shall apply to all matters pertaining to Nigerian content in respect of all operations or transactions carried out… with the Nigerian oil and gas industry. By this provision, the Act takes primacy over all other existing enactments and laws concerning all operations and transactions pertaining to Nigerian content carried out in industry. S.2 deals with all regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry. It states that in

dealing with these operations and obligations involving the industry, it "…shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution".

Simply put, it was aimed to increasing indigenous participation in the industry by prescribing minimum thresholds for the use of local services and materials thus, promoting the transfer of technology and skill to Nigerian labour sector of the industry. It has been reported that though, oil and gas industry accounted for over 90% of the Nigeria revenue, however it contributed less than 38% to her GDP. Thus, the absence of local capacity in the industry resulted to the repatriation of more than $10 billion yearly which average industry spend into foreign accounts overseas. [663] Again, expatriate workforce subjugated the local strategic positions in the industry.[664] This is because, oil industries in Nigeria before the Nigerian Content Act were exclusive safeguard of the International Oil Companies (IOCs) and other expatriate companies in all areas. These ranged from exploration, production, trading and service operations. It was noted that most profitable contracts of the industries were carried by foreign manufacturers. Therefore, the absence of local contents adversely affected labour creation and growth of the domestic economy overtime.

Unarguably, for over fifty years of petroleum exploitation in Nigeria, the industry has only functioned as an 'enclave' economy.[665] It has little linkages and contributions to the wider input Nigerian economy and local communities' development. The earlier efforts to give weight to the local content policy included establishment of various research and development training centers, education and support funds; provisions the Petroleum Act[666] failed to conceive. Because, every attempts made by the previous government to introduce 'local content policies' were ineffective and impotent. As a result of the absence of appropriate legal framework to drive such policies, all mandatory employment and training of Nigerians by petroleum operators, provisions on technology transfer, local

[663] See generally 'Overview of the Nigerian Oil and Gas Industry Content Development Act 2010' Article published on Aug 29, 2014 via http://energymixreport.com/overview-nigerian-oil-gas-industry-content-development-act-2010/ accessed 27/7/2017.
[664] Ibid.
[665] See Lawrence Asekome Atsegbua. "The Nigerian Oil and Gas Industry Content Development Act 2010: an examination of its regulatory framework", Volume 36, Issue 4, (2012) Pp 479 – 494.
[666] Lawrence Asekome Atsegbua ibid p 479

content utilization, recruitment and training of Nigerian personnel contained various contractual obligations[667] were majorly done by expatriates.

Now, s.4 establishes the Nigerian Content Development and Monitoring Board (NCDMB) to implement the provisions of the Act. It makes further procedural guidelines and monitor compliance by operators in the industry. S.3 provides that Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and all projects contracts. The proviso further notes that 'there shall be exclusive consideration to Nigerian indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute contracted work'.[668] The s.106 defines Nigerian content as "the quantum of composite value added to or created in the Nigerian economy by a systemic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry".

It sermonizes that the minimum Nigerian content in any project to be executed in the Nigerian oil and gas industry shall be consistent with the level set out in the Schedule to the Act.[669] The Schedule lists various activities in industry and sets out the desired level of Nigerian content in accordance with various units of measurement. Note that there is a caveat. S.11 (4) of the Act authorizes the Minister's importation of any relevant items where there is inadequate capacity locally. S.7 holds that in bidding for any license, permit or interest, operator, shall submit a Nigerian Content Plan[670] to the NCDMB demonstrating total compliance with the Nigerian content requirements of the Act before authorization certificate[671] to carry out any project in oil and gas industry sector in Nigeria is given. It is noteworthy that there has never been similar provision of petroleum law in Nigeria that

[667] Victor Onyenkpa, Ehile Adetola Aibangbee and Akinwale Alao. 'Nigeria: Petroleum Industry Bill 2012: Highlights of The Fiscal Provisions', (November 2012) accessed via http://www.mondaq.com/Nigeria/x/201956/Oil+Gas+Electricity/Petroleum+Industry+Bill+2012+Highlights+Of+The+Fiscal+Provisions 11/07/2016.

[668] See s.3(2). For the purposes of this Act, s.106 defines a Nigerian company as: "a company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians".

[669] See s.11(1).

[670] These Contents Plans are stated under s.10 of the Act.

[671] See s.8.

provides for guideline for award of oil blocks and other licenses or the bidding[672] in a more unambiguous manner like this Act.

To strengthen the position of the Content Act and make the enforcement comprehensive, Petroleum Industry Bill (PIB) 2012[673] was forwarded to the National Assembly for consideration and passage into law on July 18th 2012. The Bill provides for a legal, fiscal and regulatory framework for the Nigerian petroleum industry. PIB was intended upon enactment to repeal the Petroleum Act and many others[674] currently governing the Nigerian oil and gas management and the entire industry settings. This Bill has been delayed from 2012 till date and it is yet to be signed into law. The ethnic political conundrum over the provision of the Bill stopped the passage. Thus, forecloses benefits envisaged by the local content or communities or ameliorate the conflictual provisions of the enabling laws and possible amendment of environmental impacts of oil exploitation or control in Nigeria.

S.4 of PIB provides that all agencies and companies shall be bound by the NEITI Act 2004.[675] NEITI was to monitor bids for contracts, licenses and leases received and ensure that bids are processed in accordance with the published guidelines to achieve transparency and accountability.[676] PIB was seeking to ensure a better management and allocation of petroleum resources in Nigeria and that their derivatives are conducted in accordance with the principles of good governance, transparency and sustainable development of Nigeria and to correct the oil contentious impasse. Imperatively, the synopsis of the Bill was intended to providing general insights of new legal regime by outlining significant legal, institutional, environmental, fiscal, regulatory reforms and cushion the impasse created overtime in the industry as the Bill envisions.

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[672] Ss 14, 15 and 16 provide for the consideration of Nigerian content in all evaluations of bids and for advantage to be given on bidders on the basis of the level of Nigerian content and law.

[673] PIB was a Bill to provide for the establishment of the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry; establish guidelines for the operation of the upstream and downstream sectors.

[674] Generally, the Bill was intended to repeal Associated Gas Re-injection Act CAP A25 Laws of the Federation of Nigeria, 2004; Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria, 2004; Petroleum Act CAP 10, Laws of the Federation of Nigeria, 2004;('Petroleum Act'); Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003; Petroleum Equalization Fund (Management Board, etc.) Act CAP 11 Laws of the Federation of Nigeria, 2004; Petroleum (Special) Trust Fund Act, CAP 14 Laws of the Federation of Nigeria, 2004; and Petroleum Technology Development Fund Act CAP P15 Laws of the Federation of Nigeria, 2004; Deep Offshore and Inland Basin Production Sharing Act, CAP D3 Laws of the Federation of Nigeria, 2004; except for s.16 (1) and (2); Petroleum Profits Tax Act, CAP P13 Laws of the Federation of Nigeria, 2004.

[675] S.190(6) enumerates the functions of NEITI under the PIB.

[676] See s.3 of the Bill.

S.125 of PIB provides for Petroleum Communities Fund. This fund was to be utilized for the development of the economic and social infrastructure of communities within the petroleum producing areas. Similarly, Petroleum Technology Development Fund was re-established by PIB in a clearer way under s.93. It provides that PTDF to be utilized for the training of Nigerians as graduates, professionals, technicians and craftsmen in the field of engineering, geology science and management and other related fields in the Petroleum Industry. The Fund shall provide scholarship and bursaries to train Nigerians within and the outside the country to achieve this development. Indigenous petroleum companies' participation was provided under ss.260 – 264. The Bill also provides for better health, safety and environmental guidelines under ss.265 – 272.[677] Ss.251 - 259 proposed for prohibition of gas flaring.[678] These were a new trend from provision previous laws where some of the issues proposed here were either omitted or skeletally provided.

S.8 of the PIB supports the Content Act. It provides that the federal government shall at all times promote the involvement of the indigenous companies, manpower, use of locally produced goods and services with respect to the Nigerian content. As noted in chapter two, s 3(3) of Content Act notes that compliance and promotion is major criterion for award of licenses and permits or any other interest in bidding for oil exploration, production and development of any other sector of oil and gas industry in Nigeria. S.7 of the PIB therefore proposes for community development. It states that the federal government should encourage and ensure the peace and development of the petroleum producing areas through the implementation of specific projects aimed at ameliorating the negative impacts of petroleum activities in the region. Again, its, s 4(1) gives the minister the right to grant petroleum licenses. Under s 3(1) of Content Act, the minister still has overriding power and control that could whittle down the full enforcements of the provisions.

Note that in Nigeria, the president usually takes the portfolio of the petroleum minister[679] and dictates the guideline for the operations of the sectors. This practice is not known or supported law by any law in Nigeria. After years of disparagement geographical interests and unsuccessful debate on the PIB contents, there is now a new description of PIB named, 'Petroleum Industry Governance Bill 2016. This new version was crafted from the 2012 PIB. S.1 of the latest Bill gives the minister exclusive responsibilities to determine, formulate, monitor all government policies for petroleum industry. Minister has sole

[677] S.272 that makes a clears terms on compensation if breached.
[678] See particularly ss.253 and 257 that enumerated position of its prohibition, offenses and penalties.
[679] In Nigeria present government, the President has appointed himself the petroleum minister.

supervisory over the affairs and operations of the industry and to advise the government in all matters regarding the industry. The purpose of regulatory reform of oil and gas industry therefore, is yet to be settled due to political issues surrounding these new law. The Act failed to conceive in detail as PIB provides, the community fund, indigenous participation among others thus, sustaining the old contentions.

FIGURE 4: MAP OF NIGERIA SHOWING THE MAJOR 9 OIL PRODUCING STATES.

Source: Oil Producing States in Niger Delta Region Nigeria (excluding offshore production beyond the lower limit of the continental shelf). https://www.researchgate.net/figure/256834670_fig1_Figure-1-Map-of-Nigeria-showing-the-Oil-Producing-States-in-Niger-Delta-Region. Accessed last 20/9/2016.

Considering the Nigeria ownership pattern of natural resources exclusivity and land management,[680] Cotula's[681] opinion is imperative. The author stated; "the ability of states to regulate activities within their territory is a key attribute of sovereignty. It is important for the quest for economic development and, sustainable development of the environment in such a way that long term benefits would be sustained and derived from their natural

[680] S 44(3) of the constitution and s 1of the LUA supra.
[681] Lorenzo Cotula, 'The Regulatory Takings Doctrine' (2007) p 1 accessed via http://www.iied.org/pubs/pdfs/17014IIED.pdf . Accessed on 20/3/2016.

resources". To Kaniye Ebeku,[682] the expropriation of natural resources by central and land ownership model by state governments of Nigeria impacts negatively on the people of the Niger-Delta region. This was painted a "gloomy picture" on how negatively it affects their involvement in the petroleum administration in Nigeria despite the fact that the commodity is being exploited from their lands in huge quantity. Ebeku stated that "prior to the enactment of the 'expropriatory' laws on land and oil-related matters in Nigeria,[683] the people of the region had derived satisfaction in the level of their involvement in the management of petroleum products through the rights over their lands. He noted that before the promulgation of the Act, oil companies who obtained mining rights from the federal government approached oil-bearing/land-owning communities for a right of access to the land for its operations.[684] This matter has been settled in the US by Dunham Rule discussed in this work.

There is a legal maxim that; "whatever is affixed to the ground belongs to the ground."[685] In Roman law, the maxim was applied mostly to determine that trees and crops sold formed part of the land brought. The owner exercises the right and privilege over his land and its appurtenances because he owns it. Provisions of Petroleum Act, Land Use and 1999 constitution seemed to be changing the virility of this dictum in respect to mineral resources in Nigeria. The contest for the ownership of oil resources in Nigeria is predominantly the case between states, local communities in the Niger Delta Region and federal government in accordance with this legal maxim. It has been observed that the contention is not just between the states and federal government as noted in the Littoral case.[686] The local communities of this region are pushing to have greater control of the mineral oils in their region. The contest has degenerated into looming crisis like; militancy, communal clashes, piracy, pipeline vandalism[687] which *Abia* decision did not cure. The

[682] Kaniye Ebeku, "Oil and the Niger Delta People: The Injustice of the Land Use Act," Centre for Energy, Petroleum and Mineral Law Policy Journal Vol. 9, University of Dundee, available(2001), accessed via http://www.dundee.ac.uk/cepmlp/journal/html/vol9/vol9-14.html. Accessed on 23/6/2014.

[683] Those important legislation comprised the Petroleum Act 1969 (now Laws of Federation of Nigeria LFN 2004), Oil Pipelines Act 1956, Oil in Navigable Waters Act 1968, Federal Environmental Protection Agency Act 1988 (now known as the National Environmental Standard and Regulatory Agency Act), and the Land Use Act 1978 respectively.

[684]This was a way by which the communities had some sense of participation in oil operations, as they received some compensation for granting access and for any damage to land and any surface rights thereon. It would appear that this sense of participation has been lost since the nationalisation of land rights and oil rights LUA 1978. See Kaniye Ebeku, Op. cit, at p. 10.

[685] Legal Latin maxim of *quicquid plantatur solo, solo cedit* as enumerated above.

[686] *AG Federation v AG Abia State Supra*

[687] Alternatively, they appear to be applying the African adage as earlier noted that; "when a provoked house boy cannot match his wicked strength with strength, he maims the wicked master's favourite goat".

quest has taken international attention in recent time while government and multinational companies spend billions of Naira to contend it without solution.

It is evident on the local communities that the federal government's legal authority and extended actions are with great deal of superiority. They considered the federal government being playing politics with issues of development of the region through law.[688] Some considered such as ill-fated and expected development to come into the region of oil extraction. Ahiarammunnah[689] submitted that such development is still elusive in the Niger Delta region. Nigeria government established about four special agencies for the development of the region since 1960.[690] These have been decried as journeys to nowhere, since no outstanding development have been attracted to the region.

Major agitating condition is the constant change in the country's national administration and nature of her mineral laws. The local communities are hoodwinked by acts of infamy and militancy orchestrated by desperate groups within and outside the country which is the major challenge of the contemporary Nigeria in the management and control of her mineral oils. It has made contractual agreement, productive policies and carrying obligations vis-à-vis enforcement of her rules somewhat difficult.[691] Most of the businesses of oil and gas in Nigeria are undertaken by the Nigeria National Petroleum Corporation (NNPC) and its Agencies. To confirm that oil resources of Nigeria is deemed property of the federation. The Multinational Corporations (MNCs) joined the NNPC in Joint Venture Agreement (JVA) or Production Sharing Agreement (PSA) to facilitate the management and control of these resources. Each has an investment obligation to each new project. Traditionally, the ventures were 60% NNPC with 40% to the MNCs.[692]

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[688] This was recently witnessed in the consideration of PIB. Now a incomprehensive and skeletal new version of the bill has now been passed leaving the significant portion of the bill slumbering.

[689] Precious–Ann Ahiarammunnah, "Oil Companies: Legislation on Corporate Social Responsibility and Peace in the Niger Delta", Ebonyi State University Law Journal, vol. 2, No. 1, (2007), p. 191.

[690] These include; the federal Ministry of the Niger Delta in 2008, the Niger Delta Development Board established under the 1960 Constitution s 159, the Niger Delta River Basin Authority established inaugurated in 1976, the Oil Minerals Producing Areas Development Commission (OMPADEC) constituted in 1992 and the Niger Delta Development Commission (NDDC), which replaced OMPADEC in 2000. See, Hemen P. Faga., pp. 301-305.

[691] It is not submitted that law should not be respecter of anyone and control or ownership of oil should not be politicised. Rule of Law should always prevail at all situations but law must have human face to reflect democratic principle and true federalism.

[692] See Ayodele Embry, Jennifer Otitigbe, Celeste Thomas, 'The Price of Oil' via, http://www.stanford.edu/class/e297c/trade_environment/energy/hpetroleum.html accessed on 28/5/2014. See also P. 12 of the Environmental Impact Act supra.

The June 1995 victory of Greenpeace over Shell in North Sea exemplifies the empowerment of small organizations in the semiotic and advanced environment in which the organization tends to operate. This is where risk production tends to be at least as important as wealth production[693] a similar situation with region of Niger Delta Nigeria. Representatives of NGOs in developed nations play a wide variety of roles in relation to oil and gas projects and management. Far from being limited to strict opposition as seen in Greenpeace against Shell, NGO members may address specific projects in roles such as: cultural heritage, environment, project, consultation and community relations.[694] Such organization is yet to rise in the oil region of Nigeria to mitigate these effects. But mankind must put to an end to oil environmental degradation through legal instrumentality or pollution will put an end to mankind.

FIGURE 5: OIL SPILL CATCHES FIRE IN NIGER DELTA

SOURCE: Oil spill catches fire at Ropukwu, Niger Delta.

http://platformlondon.org/2011/11/15/eni-misled-shareholders-over-gas-flaring-in-nigeria/minolta-digital-camera-2/. Accessed on 15/4/2016.

[693] Haridimos Tsoukas, "David and Goliath in the Risk Society: Making Sense of the Conflict between Shell and Greenpeace in the North Sea", SAGE (Organization Article), Vol. 6(3), (1999), pp 499 – 528 and particularly at 499 – 501, htt://www.org.sagepub.com, accessed 13/8/2014. Worldwide, regional and local environmental or earthly green NGOs or governments' circles in advanced countries that support or promote environmental serenity and or property interests have not been felt in Nigeria. Such examples include: Earth System Governance Project (ESGP); Global Environment Facility (GEF); Intergovernmental Panel on Climate Change (IPCC); United Nations Environment Programme (UNEP); World Nature Organization (WNO); World Wide Fund for Nature (WWF); European Environment Agency (EEA); Partnerships in Environmental Management for the Seas of East Asia (PEMSEA); ICLEI - Local Governments for Sustainability. The lack or absence of these worsens the situation. More details in course of this research. Oil and gas franking, land acquisition and environmental fouling became so common especially in Niger Delta Region.

[694] Tuodolo, Felix," Corporate Social Responsibility: Between Civil Society and the Oil Industry in the Developing World", ACME: An International E-Journal for Critical Geographies 8 (3), (2009), pp. 530-541 particularly in p. 532.

The states need to be allowed to control and manage their resources in order to revitalize their environment, economies and pay an agreed tax or percentage of their revenue and income to federation, a typical US federal system example. Without this devolution, no one can say that federating units of a country are actually developing. All monies generated in each federated unit needs to be spent within the unit while certain percentage of tax goes to the center. The state units should be allowed to manage their individual economies and make arrangement to pay arranged taxes of their revenue or income to the center general upkeep such as taking care of the military, foreign reserves and relationships. Devolution and decentralization of the control and ownership of oil resources became imperative to further cushion the proliferation of "guerrilla wars" over control and oil ownership. The situation appears like where the righteous raise voices to draw attention on mineral control or ownership, perpetrators kept fuelling crisis in the Niger Delta with hope to gain some mileage or secure international attention.[695]

The ongoing justification of federal ownership of mineral resources and special attention to oil is increasingly becoming controversial in Nigeria. The present ownership model generates huge sums of revenues for the title-holders or awardees and corresponding royalties with other benefits for the federal government. Theoretically, federal government assumes to be re-injecting the funds from mineral oils to the development of the oil producing communities, the states and country at large. The burgeoning profits from the oil exploitation proponents give concerns that these resources are been extracted without proper legal instrumentality, consultation and community engagement due to lapses in these laws which includes allocation of oil-wells. The correction was proposed by the Content Act under s.3 where it notes the proper procedure of oil-well allocation and licenses by independent operators. The present practice occurs in "a manner that may ultimately be deleterious to the long term welfare of the community"[696] and states as case may be. The above raises another concerns about the types of rights and responsibilities that should accompany state or federal mineral and land ownership or the limitations need to be imposed on the privileges granted to exploring proponents.[697]

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[695] The national peace and cohesion especially in this region seemed chaotic over the years. Thus, the nation been associated with oil based capitalism is one of the governable spaces as forms of rule, identity and territoriality which are not necessarily fully governable as it may be almost ungovernable if it is wracked by internal dissent and conflicts due to the quest of control over oil and may not be compatible among the rule or ideology of the ruling class and the local communities. They have rather worked against one another in complex and contradictory ways.

[696] Samanthan Hepburn, *Mining and Energy Law*, Cambridge University Press (2015) p 11.

[697] Samantha Hepburn ibid pp 11 – 12.

Previously, its proceeds were shared among the regions and federal governments on basis of 50% derivation even in the time of agricultural economy. This position changed at the eve of 1979 constitution and under subsequent military regimes despite the fact that constitution has a formation of federal system. Successive claim of right to oil resources and its incentives by regions (now states) or the local communities is denied as the 1999 Constitution and the Land Use Act[698] now bequeath to the federal government exclusive rights over all mineral resources and land to state governors. The continued conflicts over oil ownership and control remained turbulent because there is no law which made provision for either shared powers between the federal, state and the local authorities. The PIB that contemplated it was disparaged. The quest can only be sought out through constitutional means or legislative framework and not just interplay of politics or national conference.

FIGURE 6: BONGA COMMUNITY OIL SPILLAGE IN NIGER DELTA

SOURCE: Nation Newspaper Nigeria of August 18, 2015.

The relationship between the multinational oil companies and local communities should be well outlined in the law. It should involve the three cardinal stakeholders to the exploration of these resources; the local communities, state government and the multinational oil companies with federal government supervising. This will consolidate the principles of true federalism and letters of ss.16, 43 and 44 (1) of the constitution. Particularly, s.2(1) and (2) which emphatically state, "that Nigeria is one indivisible and indissoluble

[698] See generally the constitution s 44 and the Land Use Act ss 1, 5, 28 and 29. The confusion is that there would be no oil without land. Thus, if the state by the Land Use Act has control over the land, there should also have control in the resources of the land simplicity.

sovereign state to be known by the name of the 'Federal Republic of Nigeria and that Nigeria shall be a federation consisting of States and a Federal Capital Territory". Decentralizing control over natural will revolutionize its wild and uncultivated state of affairs to a more suitable, 'democratic' and domestic use of power. It will eschew federal might from towering influence on the choices of all oil and gas policies, management and control which promotes mismanagement and conflicts. As Chapter two of this work notes, implications of oil exploration have bearing on local and international environment. States and local communities should be involved in the oil leases and contractual arrangements in Nigeria.[699] In alternative to total control of regional resources, power should be devolved to oil bearing states and PIB passed into law.

4.6 CONCLUSION

The study finds that discrepancies between private and public ownership of land became evident because of poor draft of these laws. Previously, there was regional and central control of oil minerals under the colonial constitutions. The present law is born from regional sentiments, contest of power, military interruptions, ignorance of the law, conflicts between law and custom and maladministration of mineral oils. Ethnic and judicial sentiments, sabotages and political interests form Nigeria legal system. These are determined to a large extent through customs, political, social and economic interests as well as physical and geographical nature of people of Nigeria. In Nigeria, the federal government's absolute ownership theory of title to all minerals and petroleum products is a breach to s.43 of CFRN and needs to be divested. This will allow individual, families, communities and states to have rights and control over oil mineral resources. Under the LUA, they own the land which petroleum products are been extracted and should be allowed to retain rights to petroleum from the respective lands.

The above was the Supreme Court of Pennsylvania US's decision in *Dunham & Shortt v Kirkpatrick,*[700] This an over a century decision upheld *Butler v Powers Estate*[701] in overwhelming judgment of a six to zero decision of adjudicators. It was a much anticipated

[699] See ss 1, 5, 6, 28, 29, 34 and 36 ibid.

[700] *Dunham & Shortt v Kirkpatrick,* (1882)101 Pa. 36. See also Yinka Omorogbe, *The Oil and Gas Industry: Exploration and Production Contracts.* Malthouse Press 1997, 1st Reprint, Florence and Lambard (2008).

[701] *Butler v Powers Estate* No. 27 MAP 2012, 2013 Pa. LEXIS 789 (Pa. Apr. 24, 2013). Where Appellants Jon and Mary Josephine Butler (the "Butlers"), owned 244 acres of property located in Susquehanna County of Pennsylvania. The deed by which the Butlers acquired their property contained a reservation of "one-half the minerals and Petroleum Oils to said Charles Powers his heirs and assigns forever." The reservation dated back to 1881, when a predecessor in title to the Butlers acquired the property from Charles Powers the Pennsylvania Supreme Court Clarified Shale Gas Leasehold Rights and ownership against Nigeria absolute ownership especially as the property ownership had existed prior to the present legal regime.

by natural gas producers and landowners in Pennsylvania. In clearing the confusion of who owns the mineral rights to shale gas, her Supreme Court held that the bottom line is that in Pennsylvania. 'Minerals' in deed reservation does not include shale gas, and unless the reservation shows specific intent to reserve the right to the shale gas, a general reservation for 'minerals' does not do the trick. Nigeria laws treat land and mineral ownership in a fragmented way despite their physical coalescence. This is reliant to the legal legitimacy vesting provisions with implementation of strong and effective concessional framework for granting licenses for explorations on federal government 'only'. The Nigeria Supreme Court should have considered *Dunham & Shortt v Kirkpatrick* with *Texas case* supra in resolving augments in *Abia State case*. The failure rebirths conflicts that the court did not conceive thus, need a revisit.

Therefore, political doctrine approach only as many literatures proposed is not panacea or magic potion to quell the contentious of resources control in Nigeria. It needs both political doctrine and legislative intervention as this work identifies. Because, there is no reliable data which aid the computation of all revenues accruing from states that is allocated to each state of Nigeria. The principle has tendency of making resources-endowed states richer and those not endowed poorer.[702] The researcher found such arguments watery as the proposal of distribution needs to be well spelt in the law. The contention of the littoral states before the promulgation of Offshore/Onshore Dichotomy Act (2004) was that the oil extracted from the seaward of offshore was not included by the federal government under the derivation principle. The *Abia decision* fetched more controversies than solution.

Description of relevant laws comes from understanding of law-making and judicial processes involved come through legal precedents. The problem with the Nigeria oil control appears to be a theory of colonialism, expansionism, interventionism and maladministration by the political heads at the Centre against the structure of national federalism under ss.1 and 2 of the constitution. Devolution and decentralization of power over oil is recommended in Nigeria and PIB needs full passage and implementation. The sociological and political implications of the society should determine their laws and not the imposition of military decrees, political chauvinism or sentiments.

The present constitution was vague on issue of the citizens' welfare and regional cohesion in management of mineral oil. It makes economic, social, educational and environmental

[702] Adebayo Adedeji, *Nigerian Federation Finance: Its Development, Problems and Prospects* London: Hutchinson Educational Ltd (1999) p 65.

objectives non-justiceable.[703] Thus, no citizen has right to demand or sue in the court of law as held by the Supreme Court in *Gani v Abacha* supra as it falls within the Fundamental Objectives and directive Principles of State Policy – Chapter II. The existing federal structure supports idleness and it breeds corruption. It supports leaders jostling for oil benefits of the citizen's welfare. Nigeria oil law puts too much power at the center leaving the states, local people and their economy retarding. It impoverishes the local contents as it failed to support domestic goods, productivity, and creation of jobs, competition and efficiency at the local levels.[704] It feeble Nigeria before the international community due to the level of poverty it records. There is need for comprehensive law to promote better legal hypothetical measures under s.16 (c) and (d) of CFRN.

[703] See ss 16, 17, 18 and 20 and importantly s 6(6)(c) of CFRN.

[704] By Tony Osborg, 'True Fiscal Federalism is the only Solution' Premium Times (July 9, 2015) accessed on 20/7/2015 via http://blogs.premiumtimesng.com/?p=168088.

CHATPER FIVE

NON-OIL MINERALS: CASE STUDY OF EBONYI STATE

5:1 INTRODUCTION

This chapter takes on non-oil mineral laws and management in states of Nigeria and Ebonyi State's experience in particular. It makes a concise history of development of solid minerals in Nigeria. The researcher will give a systematic overview of the non-solid mineral laws and government's involvement. It will consider intervention in the flow of revenue from its operations among three tiers of government and other 'stakeholders' operators in sustaining nation's economy. The revenue streams of solid mineral[705] sector will be reviewed and how law impacts on it. The chapter will attempt to provide a synopsis of the legislative frameworks on property rights and general concepts of ownership of solid minerals. We will note ownership divergences among natural resources and its activities in Ebonyi State. It will look at federal legislations influences on states laws in development of solid minerals in Nigeria. The research will picture relevance of the sector on economic recovery, potential local content promotion and importance of foreign investments.

It will consider some major hindrances and risk areas within the context of Ebonyi State and Nigeria's fiscal, land and solid mineral laws in general. The choice of Ebonyi is due to the dormancy of non-oil minerals in the state. The state had previously played pivotal roles in the production of cement through NIGERCEM Cement Plant now abandoned. The writer will look at various activities of non-oil minerals in Ebonyi and how the mineral law stops states from exploring these resources. The research will digest importance of non-oil laws in developing states and how this impacts on state legal and economic autonomy under federal system. The chapter looks on laws that guide the relationship between the solid mineral companies, the immediate landowner's, the local communities and the government in Nigeria and Ebonyi State. It will have swift glances on the landowners and local communities' rights over leases and assess the impacts of federal and state laws on non-oil activities.

This chapter discusses divergences between oil and gas practices and non-oil mineral resources activities in Nigeria. It will consider how it affects Ebonyi State's economic strength. It examines how solid mineral could be used to diversify and stabilize the states and national economy especially with the recent recession dwindling crude oil price. The

[705] This means same as non-oil minerals and will be used interchangeable in this work.

researcher will study various Nigeria and Ebonyi State solid mineral laws, policies and its enforcements pedigrees. The work will examine laws guiding solid mineral extraction and its impacts in Ebonyi State. Practices, differences and challenges in implementation of these laws will be considered. Taking into account the scanty laws and literatures on Ebonyi State solid mineral development, the chapter will look critically at Nigeria Mineral Laws generally and relate it to Ebonyi State. Where possible, make comparisons and acknowledge any loopholes. This is because of its high demand at international market and its significance on the state and national economic growth. The work will study if Nigeria has any history of judicial decision on solid mineral resources and concerns cases of mineral ownership.[706] This chapter will reveal what may be causing government silence in enforcement of the Mineral and Mining Act on ownership.

Finally, law cannot stand without viable economy and so, will economy will not stand without enabling law. Therefore, it will conclude on how the abandonment of solid mineral sector in Nigeria negatively affects the state of laws and economic growth. The needs for enabling laws and policies to revamp non-oil mineral in reducing dependence on oil revenue will be discussed. Due to the economic importance of solid minerals and its impacts on environment, we will consider why it is imperative to legislate on laws that will guide their activities. It will clarify on how healthy environment exploration may be achieved in Ebonyi State through law-making. The chapter concludes by noting the importance of legal frameworks for solid minerals management.

5:2 BACKGROUNDS OF SOLID MINERAL EXPLOITATION IN NIGERIA

Solid mineral resources had been economically viable in Nigeria over the years but now been abandoned. Nigeria had depended on this abandoned sector prior to the influx of mineral oils for its economic survival. Mineral and Mining Act s 2 provides that "no person shall search for or exploit mineral resources in Nigeria or divert or impound water for the purpose of mining except as provided in this Act. Locally, it had been a source of income generation for quacks, local miners and landowners of where these minerals are found. Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007[707] had stated that mining work in Nigeria has existed for over 2,400 years old. It opined that the initial mining took place in form of artisanal mining as practiced by local communities while they were searching for natural resources within their environment for their social and economic benefits. This is similar with cases of the ancient civilizations of the Nok

[706] See *AG Federation v Abia State & 35 Ors* discussed in chapters 3 and 4 of this work.
[707] Nigeria Extractive Industries Transparency Initiative (NEITI)

Culture (340 BC), the Igbo Ukwu bronze civilization (705 AD) in today Anambra State, Ife and Benin Bronze works flourished between 1163 –1200 AD in today Edo State and 1630–1648 AD,[708] when clays, base metals and gold among other things were used. But, it was not devoid of ownership contests customarily and statutorily. Old days saw customary laws taking prominence.[709]

Systematized mining began in Nigeria at about 1903 after the authorization of the minerals surveys of the Nigeria Southern and Northern protectorates. The structured mining activities of cassiterite, its associated minerals including and not limited to tantalite and columbite took off in the Northern Region in 1905 by the Royal Niger Company at Jos, today Plateau State while Coal exploration and mining commenced in 1906 in the South. The Nigeria Geological Survey Agency (NGSA) of Nigeria was established as a department of the government in 1919 to take over the work of the survey teams which earlier began in 1903. Government established the Nigerian Coal Corporation in 1950 and the Nigerian Mining Corporation (NMC) in 1972. Its activities opened in 1973 followed by the National Iron Ore Mining Company (NIOMCO), Itakpe in 1979.[710] These efforts of 1972 were made towards developing solid mineral in Nigeria after 1960 independence to boast her economic strength because of the solid mineral viability.

The Federal Government made efforts to attract foreign investors to develop the Nigerian solid minerals. These brought transformation and good economic experiences at its infancy. It diversified the nations' agricultural based economy giving rise to:

(a) the increase in solid mineral exploration from the creation of the NGSA which has successfully carried out the resources' geophysical survey of the country.

(b) the creation of the Mining Cadastre Office - MCO taking on the administration of mineral titles on a 'first-come-first-serve' and 'use-or-lose-it' basis resulting in increase in mineral title acquisition by both local and international mining operators.

(c) the increase of the capacity of Ministry Staff to carry out designated functions as well as growing the capacity of the artisanal and small scale mining (ASM) to carry out mining in a sustainable manner through the activities of the Sustainable

[708] See generally the Nigerian Extractive Industries Transparency Initiative (NEITI) Secretariat Scoping Study on the Nigerian Mining Sector Trust Fund No. 95381; Project No P114267 (Final Report, 2011) pp. 26 - 27.
[709] See Mineral and Mining Act 2007 s 1.
[710] NEITI Ibid p. 27

Management of Mineral Resources Project - SMMRP. These also contributed to the reduction of unemployment and boasted infrastructural development.[711]

There are legal frameworks guiding this development including all English laws applicable to Nigeria by colonialism.[712] They provide the legal frameworks for the development of solid minerals at this infancy stage. This proceeded to the later Nigeria Minerals and Mining Act 1999 as amended,[713] now replaced by Nigerian Minerals and Mining Act in 2007. The above was made for the purpose of regulating all aspects of exploration and exploitation of solid minerals in Nigeria and was followed with military decrees. Earlier, the NMC was mandated by Decree 25 of 1972 to acquire, prospect, procure and dispose minerals found within Nigeria territorial region excluding coal, petroleum, and iron ore. The later version of this law has brought all control of minerals in all ramifications to the government of the federation. In 2011, the Nigerian Minerals and Mining Regulations were produced to guide the implementation of the Mineral Act of 2007. The Nigerian Coal Corporation was saddled with responsibility for coal exploration and exploitation, and the National Iron Ore Mining Company - NIOMCO was given the responsibility to produce iron ore for the country's steel plants.[714]

Solid minerals activities in Nigeria were dominated by the private sector before the establishment of Nigerian Mining Corporation in 1972. The state had no control over the management of the resources. Federal government was only facilitating its activities through the provision of infrastructure in mine fields as well as collecting royalties, rents etc. This was not experienced across border as reviewed during the premier period of NIGERCEM Cement Plant in then old Anambra State, Nigeria. Nigeria was one time the largest exporter of columbite and number eight in tin production in the world.[715] The nationalization policy of seventies resulted to the foreign company owners' exodus exit from mining sector, leading to a sharp drop in solid mineral production. The discovery of petroleum in Niger Delta in 1958 followed by global energy crisis in seventies, took off the attention of Nigeria from solid mineral to the petroleum.

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[711] See report of Nigerian Extractive Industries Transparency Initiative (NEITI) Ibid at P. 26

[712] These include; Mineral Ordinance of 1946, Coal Ordinance of 1950, Explosives Act of 1964 and the Explosives Regulations of 1967.

[713] No. 34 of 1999 (now Act 2007). This Act was same in spirit and intendment with English Mineral Act even though that it has been said to have undergone some review and amendment after independence.

[714] All these arrangements had been changed by the proviso of CFRN s 44 (3). The first two have been scrapped by Government with most of its subsidiary companies privatized. The third organization is yet to be privatized but is currently not producing due to government indecision on its economic feasibility.

[715] Ibid at p. 26.

Due to the government earlier nationalization policy and the drop in tin price of 1985; the introduction of the Structural Adjustment Programme (SAP) in Nigeria came in the 1980s by the military regime. This resulted to re-emergence of artisanal and small scale mining (ASM) in the area of metal, limestone and gemstone.[716] This area faced another catastrophe by the impact of the Civil War in Nigeria in late 1960s.[717] The war resulted to a huge Naira devaluation resulting to retrenchments of labour and services together with an increasing crave for foreign exchange. The upshot created a ready market for the export of ASM-mined products led by intermediate traders and mineral smugglers. The maladministration of the sector and its legislative bottlenecks[718] led to fragmentation experienced within the sector.

The solid minerals sector began as unorganized and unregulated industry until the mineral surveys of the Southern and Northern Protectorates in 1903 and 1904.[719] The first and Second World Wars of 1914 and 1945 consistently disrupted the attempts to structure this sector by British colonialist. The sector remained depressed until its preferred counterpart, 'the oil sector' suffered international price setbacks and global glut in the 1980s and 2000s. This has shown the national the futility of over reliance on crude oil as the major source of revenue in the country as crude price is facing serious downturn presently. The dependence has started affecting solid mineral sector.

Government desires to diversify economy on solid mineral appeared through the creation of Ministry of Solid Minerals Development in 1995, now Ministry of Mines and Steel Development (MMSD). The ministry was mandated to ensuring a full extraction of solid mineral potentials of the country. But, the country failed again when it was not able to legally regulate mineral exploration activities. This prompted to the recommendation that such important decision should subsequently be extended to the EITI principles as this work will disclose. The ministry identified solid minerals of great economic value in

[716] Other reasons for the increase in metal and gemstone ASM were the civil war which sprouted in 1967 to 1970.

[717] A. I. Olatunbosun, M. O. Adeleke and O. O. Ayorinde, "Legal Regime for Exploring Solid Minerals for Economic Growth in Nigeria" Canadian Social Science, Vol. 9, No. 5, (2013), pp. 67-77; See again Obiora, pp 1-15 and Odozi, pp 5-8. See also "Nigerian-An exciting New Mining Destination" in Mining Journal Special Publication", London, February, (2006), p.5 cited by Olatunbosun; Adeleke and Ayorinde, in "Legal Regime for Exploring Solid Minerals for Economic Growth in Nigeria" Canadian Social Science, Vol. 9, No. 5, (2013), Pp. 67-77.

[718] This resulted to the low interest in the sector over time. Despite the solid mineral abundance in various states in Nigeria, the nation has not planned on how to return to the sector or diversify her economy through the combination of petroleum with other mineral resources through legal instruments.

[719] V. A.N. Odozi, "Reviving Nigeria's Non-Oil Sector for Economic Development for CBN Executive Staff", (Economic and Financial Review), 35(4), (1997) Pp 5-8.

Nigeria but predominantly dormant in Ebonyi State. Government has highlighted a number of strategic minerals that have potentials significantly to Nigeria's economic development. These include barite, gold, bitumen, iron ore, lead/zinc, coal and limestone. The sector in Ebonyi State is currently dominated by illegal, quacks, artisanal and small-scale mining operations.[720] The operations are mainly informal, working with rudimentary methods and limited technical training, social provision or environmental consideration.

5:3 SOLID MINERAL, MINING LAW AND ITS ADMINISTRATION IN NIGERIA

Law plays vital roles in the administration of solid mineral management in Nigeria. This dates back to the colonial era[721] when the mineral laws of England were applicable in Nigeria until 1960. Period after 1960 experienced some military interrupting decrees into Nigeria mineral laws. There are laws guiding ownership, exploration and activities of solid mineral resources in Nigeria. These comprise the following:

i. Minerals and Mining Act LFN 2007.
ii. Nigerian Mineral and Mining Regulation 2011.
iii. Mines and Quarries (Controls of Buildings, etc.) Act 2004.
iv. Land Use Act 1978.
v. National Minerals and Metals Policy 2008.[722]

States' mining exploration is generally governed by the Nigeria Minerals and Mining Act. This is operationalized in the National Minerals and Metals Policy approved for the sector in 2009.[723] The Minerals and Mining Decree regulated management of the solid mineral resources in Nigeria. It replaced the 1999 Minerals and Mining Act, which replaced the Mineral Act of 1946. The National Minerals and Metals Policy prepared in 2008 by the Ministry of Mines and Steel Development provides strategic guidance on the management of mineral resources and metals. It can be considered as the strategic basis for the Nigerian Minerals and Mining Act from 2007. An update of Seven Year Strategic plan for Solid Minerals Development in Nigeria was made to cover 2002 – 2009. The National Policy on

[720] It is only in quarrying that large-scale operations exist in few places major one in the state which was NIGERCEM Cement Plant now abandoned. This was then the only cement industry specializing in stone aggregates – limestone, cement production and other mining activities.

[721] All English law were applied to Nigeria and these laws are still felt in the sector in Nigeria.

[722] Other sources of law affecting the mining industry include: The Nigerian Investment Promotion Commission Act, The Companies and Allied Matters Act, The Environmental Impact Assessment Act, Cap E12, LFN 2004, The Foreign Exchange (Monitoring and Miscellaneous) Provisions Act, Cap F34, LFN 2004, The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (No. 25) of 2007 and Taxation laws.

[723] M. T. Ladan, 'Mineral Resources Law and Policy in Nigeria', No. 8: (January – March, 2014) Pp 6 - 8 Accessed via http://www.academia.edu/7640402/Mineral_Resources_Law_and_Policy_in_Nigeria visited on 20/12/2014.

Solid Minerals Development from 1988 was provided. It contains two separate policies; one for minerals and the other for metals. Nigerian Minerals and Mining Regulations 2011 is the document that provides a good interpretation of the Mining Act of 2007 and guidelines for operations of solid minerals.[724] The said Act vests regulation of mining under the Minister of Solid Minerals who has supervisory power on behalf of the Federal Government of Nigeria. The Ministry issues out licenses to prospective mining operators.[725] S 7 of Act provides more classes of licenses in the mining sector. There are:

a. Reconnaissance Permit
b. Mining License
c. Quarrying License
d. Small Scale Mining License
e. Exploration License

Different procedures are applicable to different minerals. These include procedures for quarrying of precious stones with similarities to that of mines[726] and oil and gas. The procedures are contained in the various laws governing natural resources as discussed in chapter 3 of this work. The principal legislation regulating mining and solid mineral resources in Nigeria is Nigerian Minerals and Mining Act 2007.[727] In the exercise of the powers conferred on the Minister by ss 4 and 21 and all enabling powers in that behalf, the Minister of Mines and Steel Development has powers to make regulations regarding the sector.

The legislative framework and minister's roles over the sector are embedded in the Act.[728] It provides that the Minister shall by regulation determine areas wherein an exploration licence and a mining lease shall be granted based on competitive bidding. Pursuant to Regulations that may be made by the Minister, the Mining Cadastre Office - MCO shall consider competing bids through an open and transparent method and select the bid. This will promote the expeditious and beneficial development of the solid mineral resources of the area. Since then, it is not established if the presence of this regulation was witnessed in Ebonyi State. It is where exploitation and economic formation of almost the entire

[724] See Nigeria Extractive Industries Transparency Initiative (NEITI) ibid.
[725] Note that there is no similar role or regulation for states.
[726] See ss75-80 of the Mines Act ibid.
[727] No. 20 which came into force on 29th March 2007. No.34 of 1999 Cap. M.12 LFN 2004. The Nigerian Minerals and Mining Act No. 20, came into force on 29th March 2007, repealed the Minerals and Mining Act No. 34 of 1999 Cap. M.12 LFN 2004. Note that this changed the previous law.
[728] See again s 4 and s 21 of the Act.

activities of are not programmed, legislated or monitored.[729] The facilitating setting with the mining includes the development of a new legislative framework, policies, revisiting and coordinating the abandoned solid mineral sector for economic revitalization.

The Act contains specific provisions that will enhance private sector leadership in the development of the mining industry. But this is prominently centred on the minister who is to administer the subsector. The Act provides that the minister should have administrative power of the sector with responsibilities for the development of well-planned and coherent programme of exploitation of the mineral resources in Nigeria. This is not felt within Ebonyi State considering the enormity of her solid mineral resource deposits. It establishes a Mining Cadastre Office (MCO) which operates as a sole Agency responsible for the administration of mineral titles with exclusive jurisdiction over the whole country. The MCO is responsible for considering applications for mineral titles and permits, issuance, suspension. Upon written approval of the Minister rescinds any mineral title. But, the enforcement pedigree of this Act and non-presence of MCO across the states had remained an impediment to the success of the solid mineral exploitation. There is no provincial or states laws and office in Federal Capital Territory is too far to monitor activities of solid mineral across 36 states.

There is no state mineral law in Nigeria or serious efforts propelling its enactment. Neither has the state witnessed a stringent measure to curb uncoordinated exploitation activities to promote income generation and full enforcement of the law. The country has no implementable policies regarding mining exploitation for states. The Act having been the principal legislation that supposedly regulating the Nigeria mining activities, vests the control, regulation and ownership of all mineral resources solely in the Federal Government of Nigeria. The National Minerals and Metals Policy and the Minerals and Mining Regulations[730]regulate the mining sector at the same time. There are specific regulations that these provisions contained regarding issues on royalties, fees and compensation which are paid by holders of mining rights.[731] The practice of the exploitation takes different stand. Implementation of the above is another concern under the present federal legal system. Mineral Act gives administration of the mining industry in

[729] There is need for the Federal Government of Nigeria to create an enabling law and environment that will enable business to flourish in the solid mineral subsector.

[730] See Nigerian Mineral and Mining Regulation 2011. Other laws, policies and regulations regulating the mining law in Nigeria as noted above include Minerals and Mining Act LFN 2007; Mines and Quarries (Controls of Buildings, etc.) Act 2004 and Land Use Act 1978 now 2004.

[731] As provided by Sections 24, 33, 35, 37, 38, 102 and 112 of the Act.

the federal Ministry of Mines and Steel Development (MMSD), operating through some departments of the ministry:

1. Mines Inspectorate Department;
2. Environment and Compliance;
3. Mining Cadastre Office; and
4. Artisanal and small-scale Mining Department [732]

There is no similar state department. Thus, it ought to have had suburb or state offices across the country including Ebonyi State for easy monitoring, administration, enforcement and implementation of the policies. There is none regional or workable state sub office outside the central office. This makes administration and implementation of the mineral policies unattainable resulting to none adherence to the solid mineral policies or laws by exploring companies in Ebonyi State. Such dispensable policies include the full implementation of the Environmental Impact Assessment (EIA) and royalties payments. Absence of implementation of EIA in Ebonyi State is causing huge loses than gains. There is no pre-assessment of the site and writing of the EIA before moving into it and no quarterly assessment of the site environs. The nature of the site after mining is not been considered.

The level of stone crushing and other mining activities are not monitored and its effects on the environs are enormous. The wells and large artificial streams or dams caused by these activities are also not filled at the expiration of the lease. Usually, at the end of the mining or stone extraction, the sites will remain death traps for the landowners and villagers. This breaches ss 114 and 115 of the Act.[733] Miners believe that filling these sites will cost them fortunes and try to dodge it during lease negotiation. Filling such has never been witnessed in the history of mineral extraction in Ebonyi State. It is argued that state will have a better monitoring and enforcement strategy if they legislate on solid mineral resources and its activities concurrently with national assembly.

Prospective miners can obtain licenses for exploration or approval of their mining from the ministry. Lower cadres of miners or artisans can obtain license for only Reconnaissance Permit, Exploration License and Small Scale Mining License but they are not qualified for mining license. But with these three classes of licenses, artisans may still fail to obtain such licenses because of the requirements which include showing 'proof of sufficient

[732] See s 4 generally.
[733] Pursuant to s 10

working capital and technical competence to carry on the purpose'.[734] These provisions have negative consequences. Such may have pushed many artisans into illegal mining of solid minerals across Ebonyi State whenever they fail to get licenses. Some do attempt to obtain licenses of any nature but move to the sites. The issuance and administration of licensing is done by the Mining Cadastre Office.[735] The office is established by the Act as an independent body with 'the responsibility for the administration of mineral titles and maintenance of cadastral registers'.[736]

S 2 of the Act provides that no person shall search for or exploit mineral in Nigeria or divert or impound water for the purpose of mining except as provided in this Act. The section continues that "the provisions of this Act in respect of reconnaissance and exploitation of mineral resources in Nigeria shall apply to radioactive minerals with such modifications as may be determined by health and policy considerations". The last phrase of this Act gives blank cheques to states and even the local authorities to make laws on the subject if such is considered good for public safety and wellbeing of that states. But the inefficiencies application of this section may be responsible for illegal and uncoordinated extraction of solid minerals with explosive locally to the detriment of the state internal revenue generation (IRG) and fouling of its environment. Amoffia Ngbo in Ebonyi State has witnesses many dead from these explosives and houses falling indiscriminately over the years.

Mineral Act and the National Policy on Mineral resources provided for the establishment of specific units for the ministry:[737]

i. The Mines Inspectorate Department with responsibility for the enforcement of mining laws and collection of revenues.
ii. The Mines Environmental Compliance Department for the enforcement of global environmental best practices in mining.
iii. Artisanal and Small-scale Mining department for the formalization of the operations of artisanal and small-scale miners and provision of extension services for them. In order to provide support services, there are two types of funds that were created. These include:

[734] See ss 18, 68, 71, 73, 76 and 78 respectively.
[735] See ss 4 5, 6, 7 and 10 of the Act.
[736] S 4(2) Ibid.
[737] See generally Chapter 1 Part II.

a. The Minerals Development Fund to be utilized for the development of human and physical capacity in the sector; and
b. Funding geo scientific data gathering, storage and retrieval to meet the needs of private sector led mining industry.

iv. Equipping the mining institutions to enable them perform their statutory functions.

v. Funding essential services to small scale and artisan mining operators and provision of infrastructure in mines land.

vi. The Environmental Protection and Rehabilitation Fund to be funded by contributions by mineral title holders on a yearly basis for the purpose of guaranteeing the environmental obligations of Holders of Minerals title.

vii. A provision that aims to compensate mining host communities is the requirement that no license shall be issued without the signing of Community Development Agreement between the prospective mineral holder and the host community[738] which shall contain 'undertakings with respect to the social and economic contributions that the project will make to the sustainability of such community'.[739] The agreement shall address all or some of the following issues relevant to the host community. Such relevant issues relate to the corporate social responsibility. They have been enumerated as:

a. Educational scholarship, apprenticeship, technical training and employment opportunities for the indigenes of the communities.
b. Financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power projects.
c. Assistance with the creation, development, and support to small scale and micro enterprises or business concerns.
d. Agricultural product marketing; and
e. Methods and procedures of environmental, socio-economic management and local governance enhancement across the host communities.[740]

It was not made clear under this Act on who the community development agreement is to be negotiated and agreed upon. The interests of the immediate landowners did not come to forepart. None specification of these issues in the Act creates gaps on the administration of

[738] Ss 116 and 117 of the Act.
[739] Ss 116 and 117 Ibid.
[740] See s 116 (3) (a – e) of the Act.

the mining enterprises. It establishes two funds: 'The Minerals Development Fund and Funding Geo Scientific Data Gathering, Storage and Retrieval to meet the needs of private sector led mining industry'. They failed to provide its valuation or how to access it. The essence of the law is not about law making but it's generally acceptance. These will determine the possibility of its enforcement. The vague and complication of this Act in important areas[741] had left its implementation erroneous. Such interpretation is desirous to prevent political interests of the immediate landowners or the host communities from hijacking the entire processes and its benefits. This is generally seen across Ebonyi State and particularly in Amoffia Ngbo since late 1970s. Sometime, it results to communal crisis and litigations. Case at hand is the Amoffia mineral management crisis from 1992 to 1995, 2008 to 2015 and in Ishiagu of Ivo all in the Ebonyi State since the year 2000. Lives and property worth billions of Naira are being lost. Major cause of this crisis is poor draft of the Act. Politicians take undue advantages of the poor enforcement to manoeuvre landowners in the lease. Often, it is among the immediate family members because, the federal agencies do not enforce the solid mineral as they do in oil.

In addition to the community development agreement, it is proposed that the mineral title applicants must submit both Environmental Impact Assessment Report and Environmental Protection and Rehabilitation Program together to the ministry or its departments for proper scrutiny under ss.119, 120 and 121 of the Act. The above mandatory condition is designed to help the inhabitants and their environs that are been abused by miners. Mining companies give this as settlements to some none experts but influential individuals who influence their agreements to be signed by the immediate land owners. The Environmental Protection and Rehabilitation program is to ensure that the mining sites are not left degraded at the end of the mining lease.[742] Though, this is provided under the Act but enforcing these companies to comply with these provisos is yet to be witnessed. This makes the proposed regional and states offices inevitable for closer watch on the miners' total compliances.

In Nigeria, the EIA seemed to have come through oil exploration guidelines but same has been transferred to other mineral extraction and industrial sectors. The EIA Act and policy are faced with great challenges. Its regime's major bottleneck is the inability to transform the provisions of the EIA Act and Environmental Guidelines and Standards for the

[741] Especially as it concerns the immediate landowners, the host communities and its development and practicability of accessing the said funds.

[742] See as ss 98, 111 provide and particularly s 114 and s 128 of the Mineral Act.

Petroleum Industry in Nigeria (EGASPIN) into reality. It would have been positively impacted on other mineral extraction sectors. This was caused by the poor draft of the Act and its implementation and best global best standard being derailed. Mineral exploitation practices and compliances to the rule became almost impossible due to its nature. While admitting few regulations on EIA, most of these laws are either obsolete rules or few were not thoroughly drafted. These had led to significant cracks between laws, policies and practices.[743]

Mining is under the federal exclusive legislative list in the Nigeria constitution. It involves taking over lands in the states when mining licenses are granted. Note that the Act gives a governor of each of the Federal Republic of Nigeria exclusive power over the lands within his state. There is confusion here on who has to legally acquire lands for mining purposes before a prospective miner or investor moves to site. The seeming confusion is ostensibly deteriorated further as the LUA had earlier stated that where the federal government is interested for any land within the state, that the state governor should acquire such land and reallocate same to the federal government.[744] Since mining is provided for in the federal exclusive list, it involves taking over lands in the states or local government. The issue of who to legally acquire became imperative question of law.

The Act provides for the establishment in each state of the federation, a Mineral Resources and Environmental Management Committee.[745] The legality or otherwise of this proviso may be responsible for none existence or functional of these committees across the state including Ebonyi State. As he who owns the land supposedly own the mineral underneath and acquire same. Providing mining issues within the federal exclusive list is a twist of state rights over the state land. A reformation is proposed to move issues of mining under a

[743] See the United Nations Environment Programme (UNEP) Report of EIA regarding oil and gas exploration and production in Ogoniland in Bayelsea State of the Niger Delta Region. It stated that this is a long, complex and often painful one that to date has become seemingly intractable in terms of its resolution and future direction. The UNEP EIA Report on Ogoni was published in 2011 via http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf visited on 1th of January, 2015. It is evidenced further that in over 50 years of oil and gas exploration, no single EIA has been conducted. This is also seen across Ebonyi State mineral extraction sites from Amoffia Ngbo in Ohaukwu Local Government Area to Izzi, Ivo, Afikpo, Ishielu, Ezza, and Ikwo Local Government Area respectively. Incidentally as noted, Amoffia is community of the researcher.

[744] See s 28 OF LUA generally. See also C. Cragg, J Croft, and S. Inemo, 'Environmental Regulation and Pollution Control in the global oil industry in relation to reform in Nigeria', (A Report prepared by Stakeholder Democracy Network (SDN)) Facilitating Community Empowerment. Accessed on 4th of January, 2015 via,
http://www.stakeholderdemocracy.org/uploads/images/content_images/fonts/Environmental%20Regulation%20and%20pollution%20Control%20in%20the%20global%20oil%20industry%20in%20relation%20to%20reform%20in%20Nigeria.pdf on 4/01/2015.

[745] See s 19 of the Act. No such offices are found or located in Ebonyi State presently.

concurrent list from federal exclusive list. This will afford the State Houses of Assembly rights to legislate on mining as land and its licenses concurrently with Federal Legislators to solve the ambivalences seen in these laws.

The right should depend whether the mineral is found within a state owned land or federal controlled land under s.51(2) LUA. This will give right on whom to legislate between the state and national. The Mineral Resources and Environmental Management would be fused with the State Assembly mineral legislation where such mining involves state land. Ss 16, 17, 19, 73 and 93 of the Act provide for the Mineral Resources Committee Roles:[746]

i) To consider and advise the Minister on issues affecting returns of necessary reports affecting grants of mining titles.
ii) To consider issues affecting compensation and take necessary recommendations to the Minister.
iii) To discuss, consider and advice the Minister on the matters affecting population and degradation of any land on which any mineral is being extracted.
iv) To consider such other matters relating to mineral resources development within the states as the Minister may, from time to time, refer to the Committee.
v) To advise the departments established in accordance with the provision of this Act for the supervision of the mineral exploration and the implementation of social and environmental protection measures.

These should be considered for the state where necessary. The researcher concludes that the provisions of this Act conflicts with the provision of the Land Use Act in many ways.[747] The two Acts were aftermath of the federal laws and both are fused into the national constitution[748] as existing laws. Thus, none should supervene or interrupt the other.[749] This proviso states that subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this constitution and shall be deemed to be:

> (a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and

[746] As provided by ss 16, 17, 19, 73 and 93 of the Act respectively.
[747] While s 1 of the LUA gives land to governor, s 1(2) of the Mineral Act gives land with mineral in commercial quantity to the federation.
[748] See CFRN s 315 as noted earlier.
[749] S 315 (1), of the constitution postulates.

(b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessarily expedient to bring that law into conformity with the provisions of this Constitution.

(3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law.[750] That is to say-

a. any other existing law;

b. a Law of a House of Assembly;

c. an Act of the National Assembly; or

d. any provision of this Constitution.

S 315 (5) of the constitution continues that no provision in the constitution shall invalidate such enactments such as the Land Use Act.[751] The provisions of these enactments as aforesaid "shall continue to apply and have full effect in accordance with their tenor and to the extent as any other provisions forming part of this Constitution. These shall not be altered except in accordance with the provisions of s 9 (2)[752] of this Constitution". The constitution and the Land Use Act share common roles. S 44 (3) of the constitution and s 1(2) of the Mineral Act seem to be contentious with s.1 of the LUAct. The research

[750] See AG Abia States & 35 Ors v AG Federation (2005) supra.

[751] S 315 (6) of the constitution states "Without prejudice to subsection (5) of this section, the enactments mentioned in the said subsection shall hereafter continue to have effect as Federal enactments and as if they related to matters included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution". In this case, the provisions of the Land Use Act still stand as an independent Act of the National Assembly and thus should not be contravened by any law or proviso of the constitution. It therefore axiomatic to submit here that the decision of the Supreme Court in *AG Federation v AG Abia State* supra on control and ownership of Nigeria mineral resources be revisited.

[752] S 9 (1) of the constitution states that the National Assembly may, subject to the provision of this section, alter any of the provisions of this Constitution however, this is not its sole or legal right as the provisions of the s 9 (2) went further to say; "An Act of the National Assembly for the alteration of this Constitution, not being an Act to which s 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States". This therefore gives the State House of Assembly legal rights over these issues.

proposes that the Land Use Act should be expunged from the constitution and matters of land should be handled by the State Houses of Assembly. The states should regulate minerals activities such as mining, its management where such mineral falls within state land. This will create a better environment for state mineral productivity, economic strength and legal framework stability.

S 44 (3) of the constitution and s 1 of the Mineral Act[753] have no ground across Nigeria in respect to all other mineral resources with exception to petroleum. These legal instruments disquiet the rights, ownership, control and management of mineral resources in the country. They provide for ownership rules, exploration of mineral resources should give rooms for the protection of the national environment. Mineral Act is concerned with the possession of mineral resources, small-scale mining and the protection of interests of the host communities. It provides incentives for mining operations and defines offences. Mineral resources in the legislations exclude petroleum but they include water mineral content with establishment of Solid Mineral Development Fund. The eligible persons may apply for reconnaissance permit, an exploration licence, a small-scale mining lease, mining lease, quarry lease or water use permit.[754]

Federal legislation directs that land issues in respect to mining be forwarded to Land Use and Allocation Committee of the relevant state while lease holders shall conclude with the host community through Community Development Agreement. It provides that the obligations of holders of mining tittles regarding the environment requires holders of permits, licences or leases to carry out environmental impact assessment. Such assessment is to include an Environmental Protection and Rehabilitation Programme to the Mines Environmental Compliance Department. Fund was proposed for the aims of guaranteeing environmental obligations of the mineral title holder by the ministry. None of the several obligations of the holders of the mineral titles are been fully acknowledged by the local miners or most of these extracting companies. The reason is that, the State has failed to legislate on issues handed down from the federal legislations to the host communities like community development agreement. This creates lacuna that needs to be filled with state laws but they are foreclosed.

[753] See ss.1 – 3, 33, 59 and 63, 65 – 68, 71, 97, 104 – 113 and 131 of the Mineral Act 2007 supra as it concerns the exploitation and management of solid mineral. LUA provided no offence for illegal acquisition of land outside the provision of s.28.

[754] This is enumerated in Chapter 1 Part IV of the Mineral Act on exploration of minerals.

They contemplate on how to bring these tiers into the process without jeopardizing the chances of prospective applicants having their applications or interests back- balled for purely local reasons. Considering the level of inordinate interests by 'stakeholders or political heads with these administrative tasks, legal processes involved, the following questions arisen:

1. How far to go down the scale of authority to satisfy the lower tiers in their quests for self-identification;
2. How far to define the roles so that there would be no conflicts of interests and administrative roles between these authorities;
3. How to reduce the waiting time between the submission and approval of the submitted applications;
4. How long will these applications take to be processed is another serious issues that may be considered by the prospective miners;
5. How to accommodate state governments' agitation for a share in the resource - ownership and control of mineral resources located in their lands based on the constitutional provisions and attitudes of the federal agencies acting for the federal government in execution of the provisions become controversial.[755]

The writer borrows from the experiences of the US and Canada as discussed in chapter 6 of this work. Nigeria modeled her political and constitutional development from the US federal system.[756] It is true that the history and pattern of political and economic development of the U.S. differ in some quarters from Nigeria. However, there are certain aspects of the former that are desirable and whose replication in Nigeria legal system would make ways for socio-economic and legal system stability to withstand the involving trends. Such aspects are the institutionalizing landownership and control of mineral resources[757] as disclosed by this research.

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[755] See *AG Abia State v AG Federation supra.* S 4 and particularly s 5 of the Mineral Act that permits the Solid Mineral Minister to make regulations in respect of any matter requires to be prescribed by Regulations under the Act and prescribing, amending or withdrawing any form that may be required under the Act.

[756] Solid mineral resources found in central government lands are the exclusive property of the Federal Government.

[757] Under US ownership of land and mineral resources theory, this falls under the concurrent legislative list of the constitution giving both the central and state governments control. They exercise rights over minerals where it falls or found within their respective lands or zones. Central government land is reserved for forestry and wildlife, grazing, military, airfields, reclamation and irrigation, flood control. See Burns, J. M. and J. W. Peltason *Government by the People (The Dynamics of American National Government)*, Englewood Cliff, N. J. Prentice-Hall, Inc. (1957). p. 676. See also F. E. Onah, 'Promotion of Economic Activities through Development of Solid Mineral Potentials in The States' (2001) particularly at pp 3, 5 and 6 via http://www.cenbank.org/OUT/PUBLICATIONS/OCCASIONALPAPERS/RD/2001/OWE-01-5.PDF

Raw Material Research Development Council of Nigeria (RMRDC) had produced a corpus of Nigeria's natural resource endowment in 774 local governments and the 9555 wards. The nation obviously has over 9,000 natural mineral resources lying fallow. These minerals are yet to be explored by the manufacturing industries as raw materials for finished products.[758] The country has over 500 known solid mineral deposit sites of over 34 different minerals across the 36 states and federal capital.[759] Such mineral resources like gold, coal, tantalite, sulphur and more as will be revealed in the Tables below are widely seen across Ebonyi State. Same are still found across other states of the federation including the federal capital territory[760]and these can give the nation facelift, diversity from oil and economic destiny. The nature of control, ownership, exploration and exploitation are still been questioned.

There are some regulations made by the Ministry of Solid Minerals to primarily tackle issues of exploration and exploitation of solid minerals in Nigeria. These include; National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations, 2011.[761] It came with purpose of preventing and minimizing pollution from all operations and ancillary activities of the sector on the Nigerian environment, especially the release of priority air pollutants.[762] The principal thrust of these regulations is to prevent or minimize pollution from oil operations and ancillary activities in Nigeria. In terms of environmental governance and adherence, the regulation states that every facility shall be given equal treatment without preference as far as enforcement of relevant laws and inspections are concerned.

New facility, corporation or organization in this sector shall apply up-to-date, efficient "cleaner production" technologies to minimize pollution to the barest degree practicable.[763] In terms of planning, it provides that organization shall:

a) carry out Environmental Impact Assessment (EIA) for new projects or modification including expansion of existing ones before activities commenced;

Accessed on 10/02/2015.

[758] See Daily Trust Newspaper, Abuja of Tuesday August 28, 2012 at p.17.

[759] See again 'Ministry of Solid Minerals Development, Abuja: Making the Earth Work for you profile' et al 'Gyang, J.D Nanle, N and 3 Chollom, S.G., ibid.

[760] The federal laws and policies on solid minerals are legal jigsaw on states.

[761] S.I. No.14, Gazette No. 41. Vol. 98 of 4th May, 2011.

[762] Ladan M. T. ibid

[763]M. T. Ladan ibid at p 17

b) submit Environmental Audit Report (EAR) for existing industries every 3 years;
c) submit Environmental Management Plan (EMP) as contained in schedule XI to these Regulations.

National Environmental (Quarrying and Blasting Operations) Regulations 2013[764] was designed to control and regulate quarrying and blasting of stone operations. It covers adverse effects on the environment[765] and human health in Nigeria. The objective of this Regulation was:

i. prevent environmental degradation;
ii. ensure the use of environment-friendly technologies in quarrying operations;
iii. sustain the carrying capacity of the Nigerian land in particular and the environment in general;
iv. prevent the contamination of both surface and ground water;
v. encourage the wise use and exploitation of natural resources and the protection of the ecosystem;
vi. prevent air and noise pollution;
vii. ensure control and the safe use of commercial (blasting) explosives;
viii. avoid any interference obstruction of the natural drainage channel and
ix. ensure the safety of workers in the quarry and the public in general.

The Ministry had earlier made regulation on National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) 2009.[766] The tenacity of these Regulations was made to minimize pollution from the Mining and Processing of Coal, ores and industrial minerals.[767] Regulation 2 requires new development in the Mining and processing techniques to apply up-to-date, efficient cleaner production technologies to minimize pollution to the highest degree practicable. The impacts of these regulations have not been felt across Ebonyi State. These regulations re-enacted into state and federal Acts, its enforcement on the sector needs to be prioritized. The solid mineral and environmental sectors in Nigeria need to take notice of the recent Britain decision in *R v Secretary of*

[764] (2013) S.I. No. 33, Gazette No. 97, Vol. 100 of 30th October, 2013.
[765] Ibid at p 19.
[766] No. 31 of 2009, Vol. 96, No. 63, Official Gazette (Abuja) dated 12th October, 2009.
[767] The preliminary part of this regulation was made to take care of issues such as purpose of prospects, planning and best practices, ibid at p 17. See Regulations 1-3. Note further that the second part of this regulation covers matters relating to general permits, monitoring pollution, equity, community relations, control, mitigation and enforcement as well as incentives - Regulations 4-9.

State[768] on matters relating to environmental challenges from solid mineral waste on the country's healthier environment.

5:4 SOLID MINERALS IN EBONYI STATE NIGERIA

Ebonyi State is in the South East geo-political zone and among 36 states of Nigeria. It derived its name from her River. It is refers to as the Salt of the Nation for its salt deposits. The state was created out of Abia and Enugu States on 1st October, 1996. The state capital is Abakaliki.[769] The State shares a border with Benue State to the North, Enugu State to the west, Imo and Abia States to the south and Cross River State to the east. The state is divided into thirteen local governments. The people of Ebonyi State are predominantly farmers and traders.[770] Major mineral in the state are; zinc, lead, limestone, granite, clay and gypsum with tourist attractions. It had one of Nigeria's foremost cement factories. It has area of 5,533km2 (2,136sqmi). In her 2006 Population and Housing Census, the state population is 2,176,947.[771]

There is the overriding encumbrance, beginning with the 1969 Petroleum Act, decreed by federal military government. The law took over mineral wealth from federating units. It legitimized the unilateral move of the provisions in subsequent constitutional provisions of Nigeria. The Act provides that the use of land for mining operations shall have a priority over other uses of land and be considered (for the purposes of access, use and occupation of land for mining operations) as constituting an overriding public interest within the meaning of the Land Use Act.[772] If state desires to set up investment corporations or go

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[768] *R v Secretary of State for the Environment, Food and Rural Affairs* [2015] UKSC 28 & [2013] UKSC 25. This decision came out of the proceedings of the 'admitted and continuing failure of the United Kingdom since 2010 to secure compliance in certain zones with the limits for nitrogen dioxide levels set by European Union law, under Directive 2008/50/EC. Articles 13, 22 and 23 of the Directive on ambient air quality and cleaner air for Europe. The government of Ebonyi State and Nigeria need to change their culture towards the environment and imbibe the above decision in governing the solid mineral sector.
https://www.supremecourt.uk/decidedcases/docs/UKSC_2012_0179_PressSummary.pdf;
and http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&te visited on 30/4/2015.

[769] National Population Commission: Data for National Development.
http://www.population.gov.ng/index.php/ebonyi-state accessed 20/09/2016.

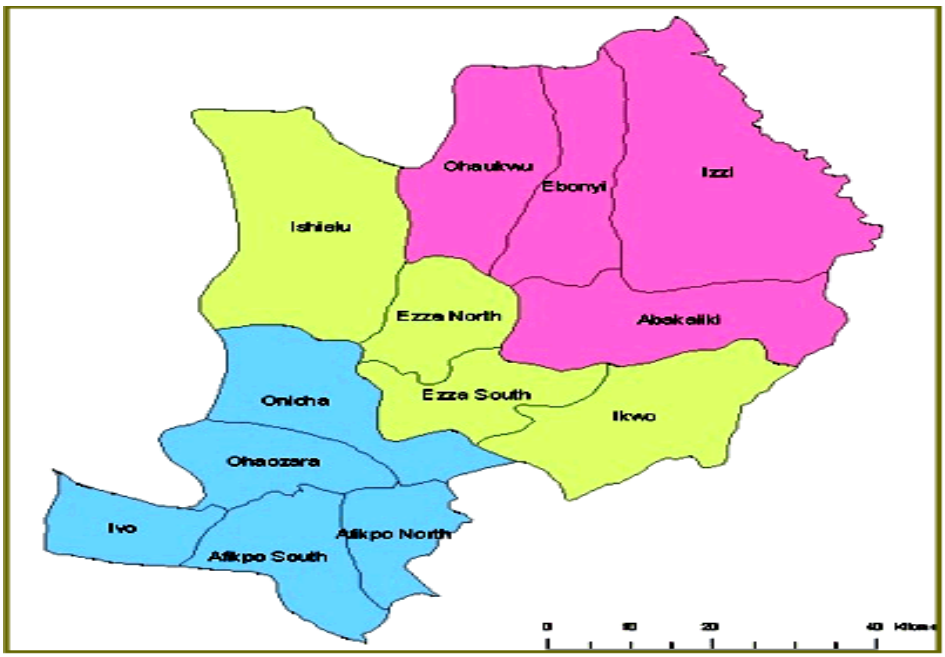
[770] One of the foremost cement industry was located in it - Nigerian Cement Company at Nkalagu. The main crops produced in the State are rice, yam, palm produce, cocoa, maize, groundnut, plantain, banana, cassava, melon, sugar cane, beans, fruits and vegetables. Fishing is also carried out in Afikpo.

[771] Ibid. See also Canback Global Income Distribution Database (C-GIDD) via https://www.cgidd.com/ accessed on 21/09/2016.

[772] See Nigeria Mineral and Mining Act s 1 and the Land Use Act s 28 supra. Ownership of solid mineral is not different from oil minerals in Nigeria. The states do not have control and rights over solid minerals in their states. Nigeria Mineral and Mining Act, No 20 2007 Act s 1(1) gives the entire property and control of all mineral resources in, under or upon any land in Nigeria, its contiguous continental shelf to the federal government. This includes non-oil minerals. S 1 (2) states that all lands in which minerals have been found in commercial quantities shall, from the commencement of this Act be acquired by the government of the

into partnership with private sectors to exploit mineral in her state, there is prohibitive caveat that state must do within the law.[773]

FIGURE 7: MAP OF EBONYI STATE OF NIGERIA.



Source: Ebonyi State information online via http://www.ebonyionline.com/about-ebonyi-state/ accessed 20/09/2016.

The Minister is saddled with the responsibility of ensuring the orderly and sustainable development of Nigerian's mineral resources. He is to create enabling environment for private investors, both foreign and domestic by providing adequate infrastructure for mining activities. He will identify areas where Government intervention is desirable in achieving policy goals in mineral resources development. The Minister is empowered by the Act to regulate and determine areas eligible for the grant of an exploration or mining lease based on a competitive bidding process.[774] Under the Second Schedule, Part1 item 39 of the Exclusive Legislative List of CFRN, 'mines and minerals, including oil fields, oil mining, geological surveys and natural gas' are firmly under the control of the Federal Government. It became difficult to reconcile this with any statement that 'there is

federation in, accordance with, the provisions of the Land Use Act. There is, indeed, everything preventing them and that is encapsulated in item 39 of the Exclusive List.

[773] Nigeria Mineral and Mining Act. See s 1(2) and s 2.

[774] Nigeria Mineral and Mining Act. See generally s 4.

absolutely nothing in the law' to hinder states exploiting her mineral resources.[775] There is no possibility for states to benefit maximally from her mineral wealth as the law suggests.

There is no state law to take account of mining company over and above National Legislation with respect to solid minerals. The country is yet to sign any transnational treaty with respect to mining or solid mineral exploration. There is no State investment treaties which are applicable to the mining industry in Nigeria. The constitution has impact upon rights to conduct reconnaissance, exploration and mining in Nigeria. This Second Schedule of the Constitution provides 'mines and minerals' under the Exclusive Legislative List. This means that the federal legislature as opposed to component State legislature have sole jurisdiction to enact its laws which may affect rights of holders of reconnaissance, exploration or mining.

Marchak noted that among the western nations, "property rights are social definitions, not made in heaven. They exist as long as the society is willing to enforce them. If enforcement is missing, they cease to exist".[776] Reason for any such change in the developed world may be because of change to market conditions, popular sentiments, scientific knowledge, new technologies, researches, lobbying, legal battles or biotechnologies. In Nigeria, a holder of customary title or other statutory surface use rights may have an impact upon reconnaissance, exploration or mining operations. S.101 of Minerals and Mining Act provides that a private land owner may be allowed to graze livestock on the land if it does not disturb mining. Mineral Act states that the use of land for mining operations should have priority over other land uses. S.28 LUA provides for the revocation of the statutory or customary rights of occupancy,[777] in the event of an overriding public interest, and mining is one such overriding public interest. The persistent high level of abuse, illegal mining activities, insecurity and poor power supply for optimum productivity[778] in achieving economic and sustainable development must be

[775] See ss 1 (2) and 2 ibid. Evaluate the standard of the mining operations and provide accessible financing scheme for expert and local miners, give domestic and foreign investors good opportunities to participate in the state mineral development. From the mining sector to thrive and contribute significantly to the gross domestic product (GDP) and sustain the expected standard, the sector requires the enactment of potent legal instruments.

[776] See M. P., Marchak, "Who owns Natural Resources in the US and Canada?" Working Paper No. 20 North America Series Land Tenure Center, University of Wisconsin Madison, (October, 1998) P. 1.

[777] Compensation would be paid by the government to the owners of such right of occupancy being acquired. The owner of private land or the government in the case of State land must, however, be given notice by the intending lessee prior to the application for use of land.

[778] A. 1. Olatunbosun; M. O. Adeleke; O. O. Ayorinde, "Legal Regime for Exploring Solid Minerals for Economic Growth in Nigeria, Canadian Social Science", Vol. 9, No. 5, 2013, pp. 67-77 at pp. 1 and 2.

controlled.[779] Justice Field had opined in US *Norton v Shelby County* (1866:425) that; "an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed".

Ownership of property connotes ''the right to use, perhaps to abuse save in so far as no damage or harm is caused to the adjoining owners of land or neighborhood".[780] Ownership of property suggests right to exclusive possession and the unfettered right to alienate or transfer such property or right in it when it is desired. It arises with respect to a given property. In Canada, the European settlers who had been either ignored aboriginal claims or obliged first nations peoples to sign treaties that forced them to live on 'reserves' but when mineral resources turned out there or it became forest of value or for other uses, the people were usually pushed off or relocated. They have mounted legal challenges to the expropriations and gaining legal backgrounds as well as social supports for their land claims even though they suffered many setbacks. This radical paradigm shift witnessed in Canada over land and minerals was born out of the passage of Alaska Native Claims Settlement Act (ANCSA) of 1971.[781] It created the Alaska Native Regional Corporations and land surface rights are now held by village corporations. This is to ensure that law does not give total control of natural resources to government.

The pertinent index of proprietary right over a given property is freedom of alienation without recourse to any consent or authority as a prerequisite for the validity of such act. It

[779] Generally, and as earlier noted in this chapter, Nigeria is naturally endowed with great natural resources that are yet to be tapped by the manufacturing sector as raw materials for finished products. According to the Raw Material Research Development Council of Nigeria (RMRDC), this has been estimated to be over 900 various of natural resources and with over thirty four (34) mineral resources such as gold, coal, tantalite, gems, sulphur that are widely distributed across the country more hugely in Ebonyi State. The country has over 500 known mineral deposit sites of over 34 different minerals across the 36 states and federal capital. The federal government has identified nine to concentrate and promote. These include Iron ore, Coal, Tin Ore, Bitumen, Gold, Columbite-Tantalite, Lead/zinc, Wolframite and industrial minerals. Note that the country is currently the 6th largest producer of tin. There are nearly 3.00 billion tones of indicated reserves in 17 identified coalfields and over 600 million tons of proven reserves. Apart from Ebonyi State, coal is found in Enugu and Kogi States. A combination of low investment due to the over dependence on oil and poor law enforcement has generally made the sector to be mainly unceremonious, much of which is outside regulatory framework. This has serious consequences for the country in the time of crude price downplay.

[780] I. A. Umezulike, ABC of Contemporary Land Law in Nigeria (Revised and Enlarged Edition), (Snaap Press Nigeria Ltd) 2013 at p 14. See also the Nigerian Supreme Court decision on *Ashiru v Olukoya* (2006) 11 NWLR PT 991 P. 1 ilustrated issue of one with better title.

[781] See 43 U.S. Code Chapter 33 - Alaska Native Claims Settlement. See also Thomas, M. E., "The Alaska Native Claims Settlement Act: Conflict and Controversy" Published by Polar Record, Cambridge University Press, 23(142): (1986), pp 27-36 and judicial landmark decision in *U.S. v Alcea Band of Tillamooks et. al* (329 U.S. 40) (1946).

does not surface where one merely has right to use or occupy property or where such individual has secured an exclusive possession of the property without the legal ability of unencumbered alienation.[782] This is evidently seen in Ebonyi State mining activities. No doubt, ownership of mineral resources in Nigeria is bestowed on the federation,[783] land in hand of each state governor.[784] Mineral Act states that, all lands in which minerals have been found in commercial quantities shall, from the commencement of this Act be acquired by the federal authority in, accordance with, the provisions of the LUA.[785]

In practice, the reverse is the case. Ownership by the federal is seen only in principle except with petroleum and land when so desired. Solid mineral resources in states are generally held by the immediate landowners and such are usually supervised by local community authorities. Where it falls into community land, it is owned communally. Where such mineral resources are found in the state's land, it is managed by the state government through its ministry. This does not affect the state's power of revocation and expropriation as provided by LUA s 28, Mineral Act s 1 (2) and CFRN s.44(3). Where found in private land, local and state governments are involved through haulage collection. The local community supervises the relationship between the explorer and immediate land owners who will negotiate and sign mining leases with the prospective miners.

States lacks legal capacity to make or regulate these activities. The issue of property rights - land or mineral ownership in Canada is settled under the ANCSA.[786] This gave the native people of Alaska through their corporations' ownership rights of large share of the resources in their territory in conformity of Alison Clarke and ORSTRON opinions. The Act established for Alaska Native claims to the land by transferring titles to twelve Alaska Native regional corporations and for over 200 local village corporations for its administration and conveyances when necessary. It is argued that resources rights in Nigeria should change as the understanding and sentiments change through her legal and societal development. Under the Alaskan settlement regime, the nation retains only active ownership and management responsibilities of some resources where:

[782] Ibid at p. 14. This is non-proprietary and can be enforced if it has constructive trust.

[783] CFRN s 44 (3).

[784] See s 1 LUA. He is to hold the land in trust and matter of overriding interests to acquire it. See 28.

[785] See s 1 (2) Mining Act. One prominent question could be, 'to what extent does this legal accolade holds in real practice in Ebonyi State Nigeria' at large.

[786] Alaska Native Claims Settlement Act (ANCSA) noted earlier was signed into law by President Richard Nixon on December 18, 1971. This act constituted the largest land claims settlement in US past experience. See Chapter 6 of this work for more details.

i. there is no established commercial value;

ii. where it is too expensive for private owners to manage; and

iii. where such has been transformed into public parks and wilderness areas.[787]

In Nigeria, it is the state government through its agencies that supervise general compliance of extraction and haulage collections. This is not with the relationship between the mining company and immediate landlords. The landlords take full control of their leases, royalties and give consent for exploration. They share the benefits in that manner they wish without recourse to state or federal government. This defeats the general concept that ownership of mineral resources is vested solely on the federal government under s 44 (3) CFRN.[788] The National Policy on Solid Minerals in Nigeria aimed to ensure the organized development of the national deposited minerals through law. This is to establish the roles of the public and private sectors and in extension, ensuring full compliances of the law.

The general policy on solid minerals comprises the increase of the public awareness as it concerns the importance of the resources with providing reliable geological information, creating favorable investment climate and encouraging the private sector to take roles in expanding the sector for economic stability. The aims involve the speeding up of the processes of the application of mining tittles and establishing Mineral Resources Committee in each state[789] of the federation with the remittance of the processing of the mining tittles. The federal laws are made to regulate all solid mineral activities, but whether the local miners and landlords in Nigeria comply with this precept is yet to be ascertained. In practice, the control and management of mineral resources in rural areas revolves around the local community stakeholders and immediate landowners with exclusion of others notwithstanding the position the law. Mineral Act s 1(3) provides that

[787] Thomas, M. E., Ibid P. 4. Despite the state right, in the renewable and non-renewable resources, state leases out extraction rights to private corporations. Thus, the ususfructuary leases delimit the rights but it allows them to reap profits from state-owned and publicly managed land resources. Examples of are the mineral resources found in the outer continental shelf of the ocean with huge deposits of oil and gas or forestry or timber sales and mining rights.

[788] Note, this proviso is fused with the Mineral Act supra. Note further that the Minister is responsible for matters relating to mines and minerals. The minister is in charge and he is to ensure the orderliness and systematic development of the solid mineral resources in Nigeria. This is presently manned by the Minister of Mines and Steel Development. But whether this is seen in practice is doubted as the local communities and immediate landowners take full charge of the administration of the lease and its enforcement while the government has but supervisory roles and haulage collections and mere oversight. The focus of this enforcement is seen in mainly in oil and gas related resources.

[789] See 'The Ministry of Mines and Steel Development Sustainable Management of Ministry Resources Project Report, Sectorial Environmental and Social Assessment', MMSD (January 2011) Pp 41 - 42

property in mineral resources shall pass from the government to the person by whom the mineral resources are lawfully won upon their recovery in accordance with the Act.

It seems that the efforts of the Nigerian government towards developing the solid minerals have not achieved the desired goals due to nature of legislations and enforcement pedigree. This is because most of the multi-national mining investors have not deemed it desirable to explore solid minerals in Ebonyi State. This had left mineral resources' exploitation in the hands of none experts, artisans and informal miners[790] in states. As a result of huge export earnings derived from oil, non-oil minerals subsector remained undeveloped and neglected[791] in recent time. Ebonyi State is richly endowed with huge solid mineral especially limestone, zinc and lead etc. These are important raw materials for the manufacturing of goods like cement, gypsum, batteries, electric cables and important components of alloys and protective coatings for other solid mineral resources. They are productive and subject for exportation and multinational bilateral relationships between Nigeria and other nations. It will enhance the states' legal benchmark on solid mineral development.

The practice of solid mineral ownership has put the question of the practicability and full enforcement of s 44 (3) CFRN and Mineral Act. One can quickly ask if the proviso is only meant with regards to hydrocarbons. Under solid minerals, private landowners negotiate with investors and go into lease agreement without getting consents from federal government. This allows the rents, royalties and other benefits to be made to immediate landowners and the supervising local communities. Example is witnessed in quarry lease between Unwu Igboke Family Unit of Ndi Oga Igboke Kindred in Amoffia Ngbo of Ebonyi State and MacDaniel Quarry and Concrete Nigeria Ltd in 2013.[792] All benefits had constantly been paid to the Unwu Igboke Family and Amoffia community while the state government takes only the haulages. This practice has some merit as they are fully involved but with contentious demerits as it concerns royalties' management.

Mining companies go beyond bond in terms of hectares and environmental compliances in the relationship between immediate landowners/local communities. The issues of corporate

[790] A. Akper, 'A Critical Analysis of the Legal and Institutional Framework for the Formalisation and Regulation of Artisanal Mining in Nigeria' (Unpublished Doctoral Dissertation). Obafemi Awolowo University, Ile-Ife, Nigeria (2008).

[791] L. L. Obiora, "Solid minerals development in Nigeria", (Mining Bulletin), 2(1), (2007) pp 1-15.

[792] This is five year tenure renegotiation lease. The Company has finished its first five years and went into second lease of another five years without recourse to federal government. There are host of other similar instances within Ebonyi State and beyond.

social responsibilities are not spelt out in the leases or under the law. The quantity of the marked site may be under paid. The landlords are not expert valuers or professional environmentalist to monitor environmental implications of the mining activities. Environmental Impact Assessment and boundary stipulation in the lease should be carried out in an environmentally sound atmosphere. Environmental issues are not discussed as investors usually settle the stakeholders or political heads who may double as environmentalists. This allows them carryout their extractions unchecked and gives room to abridging position of the law by the investors. No consideration is made on lands excluded from Minerals exploration pursuant to s 3 Mineral Act.

There are special rules for foreign applicants for mining lease in Nigeria.[793] S.48, Minerals and Mining Act(MMA) stipulates that a qualified applicant for a Reconnaissance Permit, an Exploration Lease, a Small Scale Mining Lease and a Quarry Lease must be "a citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence; a body corporate duly incorporated under the Companies and Allied Matters Act; or a mining Co-operative". For a Mining Lease, a qualified applicant must be a body corporate duly incorporated under the Companies and Allied Matters Act or any other legal entity that has demonstrated, under conditions stated in the Regulations that a commercial quantity of mineral resources exists in the area. A foreign national cannot be a holder of a mining licence unless such person incorporates a company in Nigeria in Corporate Affairs Commission - CAC. There are special regulatory provisions relating to processing and further beneficiation of mined minerals. An exporter of mined minerals is required to register with the Nigerian Exporters Promotion Council (NEPC) 2004.[794] If he registers and fulfils this legal obligation, the exporter may be qualified for some incentives: They include:

1. Export Expansion Grant (EEG);
2. Currency Retention Scheme;
3. Rediscounting of Short Term Bills; and
4. Diamond Trading Decree No 55 of 1971.[795]

The National Policy on Solid Minerals covers issues of environment on solid mineral extraction. It had provided that the Ministry of Mines works in conjunction with the then

[793] See 47 – 53 of the Act. See researcher's pictures in this work.
[794] Application of Cap. Cap F34 2004 and NIPC Act provisions will be complied with.
[795] See generally ss.23 – 29 of the Act.

Federal Environmental Agency (FEPA) 1998 as amended now the National Environmental Standard and Regulations Enforcement Agency (NESREA) 2007. This agency was to ensure strict adherence of the miners to the rules and enforcement on protection, health and safety in the mining industries - sites. The goal was to achieve environmental quietness and sustainable development across the nation with these mineral sites. To achieve this, approval for mining projects was made to be preceded by an Environmental Impact Assessment (EIA). The compliance to these under the immediate landowner and investor's leases are doubted. The enforcement of these provisions by these agencies is doubted. This had provided a shortcut to private leases and fouling of the environment.

Majorly, it was geological surveys and previous mining activities that had remained notes on it for now.[796] It is only the federal legislations and regulations that guide national mineral extraction activities. There are confusions in practice as the law of ownership of land and its appurtenances underneath does not apply to mineral ownership. The mineral Act[797] has on the other hand interferes with the power of the state governor as provided by s 1 of the Land Use Act. The enforcement has failed to meet the required standard or expectation of the immediate land owners. Legally, the resources belong to the government.[798] This is farfetched in practice and reality across states in Nigeria except when it concerns oil and gas minerals. Leases of mining of solid mineral resources are commonly entered by the investing companies and the immediate landowners or community and not the local, state or federal governments. [799]

The Act envisages that rights of occupancy as contemplated by the LUA s 9 appear to have replaced all previous rules of inheritance to land. By principle, it forms the basis upon which land was to be held in each state. These are the statutory and customary rights on land and in extension, minerals beneath. Statutory right of occupancy was to be granted by the state governor and related principally to urban lands. Customary right of occupancy accordingly means the right of a person or community lawfully using or occupying land in accordance with customary law under the Land Use Act. This position was not

[796] See 'Trade, Angro-Mineral and Investments Potentials of Ebonyi State', Published by the Ministry of Commerce and Industry Ebonyi State in commemoration of the 2014, Silver Jubilee Edition of Enugu International Trade Fair of (28th March – 7th April, 2014) Pp. 15 – 16. See also Sectoral Environmental and Social Assessment', Published by Ministry of Mines and Steel Development (MMSD) Abuja Nigeria on Sustainable Management of Mineral Resources Project, (January, 2011) Pp. 13, 33 – 41.

[797] See s 1 (2) which states that the federal government has control of land with viable minerals and can compulsorily acquire it.

[798] LUA s 1 and CFRN s 44 (3).

[799] This position was carried over to Nigeria Mineral and Mining Act 2007. See s 1. As provided by s 44 (3) CFRN, MMA s.1 and ss 1,5,9,21,22,28,34 and 36 of the Land Use Act.

contemplated by the Nigeria Constitution under the solid mineral rights leaving most of the states with mineral resources in utopia standpoint. As a result, immediate landowners battle with local communities and stakeholders on whose right it is to lease out mining sites without recourse to the Minister of Solid Minerals and Mining under ss.2 and 4 of Mining Act.

Local government authorities were empowered to grant customary rights of occupancy to any person or organization for agricultural, residential and other purposes with the proviso that grants of land for such agricultural or grazing purposes should not exceed 500 or 5000 hectares respectively without the consent of the state governor.[800] The approval of the local government was to be required for the holder of a customary right of occupancy to alienate that right. Ss 21 and 22 of the Land Use Act gave the governor and local council chairman more powers to monitor their rights and the way they are been exercised. Whether the customary rights occupiers usually seek consents are not noticed where solid minerals are extracted. The immediate landowners believe that what they lease is their land and not necessarily mineral as there is no divergent between land and solid minerals to them. The mineral investing companies may only seek an approval from the Ministry of Mining which permits prospective miners to move to site[801] and get such approval without the approving authorities knowing prospective leasing site. This is a blank cheque or blind consent. S.21 provides:

> It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever - without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or in other cases without the approval of the appropriate local government...

In consequence, the research is concerned with the practice where the immediate landowners and the communities alienate or lease out land for mineral extraction under this proviso or other absolute provisions. The issue may remain that the federal government whose duty is to enforce its statutory obligation as 'sole owner' may have abandoned its obligations or enforcers being lackluster to its rights. This is creating an opportunity for the immediate landowners and local communities to alienate lands for solid mineral activities without challenges. The Act requires amendment to be compatible with evolving trend. The state having been deprived the rights over mineral resources but was left with casual

[800] See Land Use Act ss 6, 34 – 36 at ss.6 and 36.

[801] Nigeria Mineral and Mining Act 2007 s 2 and s 4.

rights over land had given its eyes away from monitoring the activities of the solid mineral contenders within its state.

The Act prohibits the alienation by assignment, mortgage, transfer or possession, sublease or otherwise, of customary right of occupancy without the consent of either the governor or the local government as the case may be. It also forbids the alienation of statutory right of occupancy without a due consent of the governor[802] as noted in chapter here. Governors were empowered to revoke rights of occupancy for 'overriding public interest'. In extension, it includes aims for mineral resources extraction. Such reasons include alienation by an occupier without requisite consent or approval and breach of conditions governing occupancy or the requirement of the land by federal, state, or local government. Compensation is only due to the holder for unexhausted improvements on the land and not for the land itself. How will the position applies to the application of s 44 (3) CFRN?

Ss 1 and 28 LUA is permeable and political rather than legalistic or administrative. It is unknown if local and federal government usually seek such consents under this section.[803] The federal government may be covered by Mineral Act s 1(2).[804] Immediate landowners or local communities may not wish to seek these consents as they believe that the land in question belong to them. There may be confusion on who consents to alienate land for mineral extraction should come from looking at these pedigrees.[805] Matters of mineral exploitation and development are discussed on altar of the government, immediate landowners; local community and not as stipulated by the law wherever possible. The Act provides that the use of land for mining operations shall have priority over other uses. The Act opines that in the event of mining lease, a small scale mining lease or a quarry lease is granted over a land subject to an existing and valid statutory and customary right of

[802] See generally s 21 (a) and (b) ibid. S 22 LUA states: It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained: Provided that the consent of the Governor shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor: shall not be required to the reconveyance or release by a mortgage to a holder or occupier of a statutory right of occupancy…

[803] S 28 (1 - 7) of the Act.

[804] Mineral Act s 1(2) provides that "all lands in which minerals have been found in commercial quantities shall, from the commencement of this Act be acquired by the government of the federation in, accordance with, the provisions of the Land Use Act". But where states have interest and refused to acquire and relocate to federal under s 28 of the Act, it could be asked who may surpass.

[805] This is the legal jigsaw that seeks to be settled and this research seeks to address it expeditiously. It is witnessed among the private ownerships where lands are indiscriminately and compulsorily acquired by the government eminent domain.

occupancy. The governor of that state leasing within which such rights are granted shall within sixty days of such grant or declaration revoke such right of occupancy in accordance with the provisions of LUA.[806]

Mining company may move to site without the state or local government's consent with authority of federal ministry of mining. This happens if the immediate landowners agree with the terms of the lease proposal. Mineral extraction will start immediately. In practice, if these conditions are meant, other issues enumerated under the law are ancillary. Inversely, this process involves illiterates and ignorant people who may not know the implications of what they negotiate or sign. They are unduly influenced to sign whatsoever the mining company proposes through the supervision of the local community authorities or political heads that will hold bent to collecting their private percentages from the company. The landowner's interest is their annual rent, royalties and haulages. How the miners operate at sites is not considered. Also, these provisos fully enforced with the lease. Issues of compensations and other environmental considerations are left 'open-ended'.

5.5 EXPLORATION OF SOLID MINERAL IN NIGERIA, DIVERSIFICATION AND IMPACTS OF LAWS

> For long, West Africa has been a destination of choice for mining executives the world over, with countries like Burkina Faso, Ghana, Ivory Coast and Niger being actively explored and mined. Now, Africa's most populous nation, Nigeria, fortuitously located in this remarkably prospective region is opening up its mining sector and taking aggressive steps to become an alternate mining destination.[807]

Nigeria is heavily blessed with massive mineral resources. Greater parts of these minerals are deposited in Ebonyi State in the southern region. But its ineffective exploitation and development had left all states in the country to depend wholly on petroleum revenue. In extension, compelling Ebonyi State to hinge on its monthly federal allocation for the running of the state's capital projects, taking care of its workforce and daily survival. This is linked to the nature of these legal instruments.[808] The states have no legal control or management over any resources' exploration without federal approval.

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[806] See s 28 ibid.

[807] See Lesley Obiora, 'Mining in Nigeria: The Nigerian Minerals and Mining Act, 2007', Online version of a paper presented by Prof. Lesley Obiora (Former Minister in the Ministry of Solid Minerals Development on Mining in Nigeria. http://www.nigerianminers.org/sites/default/files/Mining-Mineral-Act.pdf. Accessed 10/05/2016.

[808] The effects of this on the states' polity, unemployment, under-development and economic meltdown will continue to grow until the face of law at the federal level is changed. Nigeria was depending on these

Diversifying the economy became imperative for economic stability in states through full extraction of their mineral resources to tackle capital projects outside federal cyclic allocation from oil. Nigeria needs solid mineral to remedy her dwindling oil price which recently began to affect the country's economy. The state has skilled, semiskilled and unskilled labor for industrial development. Refocusing on sustaining production of solid mineral resources in states will give the state better revenue stability and faster economic permanency. Despite the prominence of the oil sector in the past three decades, other mineral sectors including agriculture have previously done well.

The dissatisfaction of the national and state management of its enormous solid mineral resources and continuous legislative lapses has left her economy to deteriorate in the face of international trade and ranks. Taking account of Nigeria economic and developmental status prior to oil advent, the nation sustained its economy and nation building through agriculture and solid mineral-coal.[809] If resuscitated, it will remain the largest circle and most important revenue generation mechanism.[810] Solid minerals and agricultural sectors[811] hold immense potential for stabilizing Nigeria's economy and foreign exchange earnings. The limited direct linkage effect of crude oil sector on the economy is well recognized in the literature. It is coupled with the persistent volatile nature of crude oil prices in the world market. Again, the bulk of the poor people in Nigeria are located in mineral resources areas. There is need to revitalize this sector to boast the general well-being of states as provides by s.16(2) CFRN. Mining of solid minerals for exports need to be encouraged. This could be done through propagating new while reviewing previous laws and policies.

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sectors prior to the present oil era. Palm oil, groundnut and cocoa were prominence in her economy and nation growth before oil exploitation. The roles agricultural sector played could summarily include food product contribution, market influence, factor involvement and foreign exchange input and this is foreseeable in solid mineral sector.

[809] Johnston, B.F. and Mellor, J.W., "The Role of Agriculture in Economic Development", American Economic Review (September, 1961) Pp. 566-93. See also 'CBN Perspective of Economic Policy Reforms in Nigeria', Research Department (Lagos), (1993) and 'CBN the Changing Structure of the Nigerian Economy and Implications for Development', Research Department (2000).

[810] Aigbokhan, B. E., "Resuscitating Agricultural Production (Cocoa, Cotton, Groundnuts, Palm Oil, Rubber, etc) For Exports". Paper Presented at the 10th Annual Conference of Zonal Research Units of the Central Bank of Nigeria, on the theme 'Resource Endowment, Growth and Macroeconomic Management in Nigeria; Held in Owerri, June 4-8, (2001), Pp 2 – 5, and 8.

[811] B.F. Johnston, and J.W Mellor ibid had noted that "a notable policy then was the creation of marketing boards for the major cash crops at the time. On attainment of self-rule, regional governments took advantage of the operations of the boards to generate financial resources to finance their development programmes". This will be the case of Ebonyi State if the resources in the state could be tapped and developed. The performances of these sectors in states will certainly rebirth the country's dwindling oil economy.

The failure of the state and national economy with increase of unemployment could be traced to over reliance on export of crude oil. It resulted to the nation's dependence on importation of petroleum products even with her enormous crude been produced locally. The much needed industrialization was neglected to the extent that the few industries in the country cluster around consumer goods production. No serious effort is been made to diversify the income base[812] to other sectors while solid minerals are dormant. Government must be desirous of incorporating into its policy frameworks needs for promoting export of solid mineral products outside oil. The vehicle for achieving this is to accelerate the export of bye-products of solid minerals to substantially improve the non-oil foreign exchange paychecks. States mineral deposits[813] can do this great deed. This should target over 500% of the current foreign exchange earnings of the country in less than ten years. The government could achieve this through local and foreign policies, legislations and industrialization to attract foreign investors. In doing so, compliances shall be keen to consolidate those policies and ensure its aims are achieved.

In terms of contribution to GDP, states' economic stands need to be revisited. Johnston and Mellor noted that agriculture was the leading sector in the 1950s and 1960s before the beginning of coal and the recent oil development. In the period 1960-1964, agricultural output accounted for 63 percent of GDP, and in 1965-1969 for 54 percent. As noted below, the share declined significantly only from the 1970s. In 1970-1974 it declined to 33 percent, a period which marked the watershed in Nigeria's economic history through the 1973 and 1974, crude oil price shocks[814] while percentage Average of Distribution of Nigeria's GDP at 1984 Constant Factor Cost[815] kept depleting. To achieve economic diversity, solid minerals need some enterprising specific strategies that would pursue its reinvigoration and legal instability. The state and federal government need to work together with *programme-come* production policies on:

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[812] NIGERCEM Cement Factory is situated at Nkalagu in Ishielu Local Government Area and Amoffia Ngbo in Ohaukwu Local Government Area of the State was the premier cement plant in Nigeria because of the abundance of the quality of limestone in these areas but this plant has been since abandoned jettisoning all revenues from it for the state and the nation's economic support and reduction of level of oil dependency.

[813] See Daily Trust Newspaper, Abuja, of Tuesday August 28, 2012 at p.17 which attempted to produce the country's natural resource endowment of 774 local government areas and the 9555 wards of Nigeria. See also Ministry of Solid Minerals Development, Abuja: Making the Earth Work for you profile via www.msmd.gov.ng accessed on 25th of January, 2015. See further, Civil Society Legislative Centre (CISLAC), Abuja: Policy Brief on Solid Mineral Sector for the National Assembly (2010) at Pp.3-4.

[814] Johnston, B.F. and J.W Mellor ibid at Pp 4, 5 and 6.

[815] Source: CBN "Perspective of Economic Policy in Nigeria", Annual Report and Statement of Accounts (several issues) and Statistical Bulletin (December 1998). Figures for the periods 1960-69; 1970-74, and 1975-79 are said to be annual averages.

(a) Legislation that will promote states' rights and control over solid mineral exploration and export.

(b) Policies aimed at catalyzing the emergence of indigenous capacity that can satisfy substantial percentage for local production of goods and services and surplus for export by resuscitating the moribund solid mineral industries;

(c) Competitiveness of value added products so as to stimulate domestic and export demand of solid mineral products;

(d) Simplifying export procedures of solid mineral resources and surveys;

(e) Encouraging intra-African and more international trades through bilateral and multilateral agreements;

(f) Accelerating the development of necessary multinational, inter and intra-African transportation infrastructure not only through oil but through solid minerals export;

(g) Strengthening the export processing zones and factories as required;

(h) Evolving a strategic market development plan that would make Nigeria a regional leader and a global player in export of metal and mineral products;

(i) Streamlining state mineral resources implantation and enforcement through legislations;

(j) Ensuring security and safety of the investors and their investments and,

(k) Promoting the devolution of land; mineral resources ownership, control, management to individual ownerships and revolutionizing of CFRN 1999.

The quarry and allied industries are dependent on solid minerals which have great potentials in Ebonyi State Nigeria. NIGERCEM Cement Factory is situated in Nkalagu and Amoffia Ngbo in Ebonyi State. It was the premier cement plant in Nigeria because of the abundance of the quality of limestone in these areas. In recent time, government of Ebonyi State had tried to address some groundwork towards rebirthing or establishing new cement

plants in state but, the proposal is yet to come alive.[816] This premier cement factory if revisited and well reconnoitered into a reality can sustain Ebonyi State annual expenditure.

FIGURE 8: NIGERCEN PLANTS AND CEMENT MIXERS BEING ABANDONED EBONYI STATE, NIGERIA.[817]

SOURCE: Researcher's site visit picture October 2014.

Poor attention to solid mineral attracts low investment and state of law enforcement makes the sector unceremonious. Ladan[818] noted some key issues responsible to this crested insignia by unregulated mining activities exacerbating environmental degradation. Thus, mining is carried out without regard to its environmental implications. Too, illegal mining causes loss of revenue to governments.[819] This revenue could go to government treasury to be used in addressing local community,[820] resuscitating the state and national fragile economy. The place of legal frameworks on it could be responsible for uncoordinated mining and quarrying in Ebonyi State and other states in Nigeria. It is obvious that most states depend almost on the monthly federal allocation for the running of the government.

[816] In the present mining regime, the local miners and the few mining companies give the immediate landowners and 'community just token' while huge sum of money is taken away. The government is usually left with just the collection of insignificant haulages – tolls with messy environment when relocated.
[817] In Ohaukwu Local Government Area of Ebonyi State Nigeria.
[818] See generally Ladan, M. T., "Mineral Resources Law and Policy in Nigeria" Law and Policy Review Research Working Papers No. 8: published via http://www.academia.edu/7640402/Mineral_Resources_Law_and_Policy_in_Nigeria on Mar 10, 2014 Accessed on 12/3/2015.
[819] In 2009 alone, it was reported that the federal government lost about $100 million in revenue to illegal mining while the minister averred that over 2300 mining licenses were issued without the consent of the minister.
[820] Ibid at p.4

Much revenues waste on lying dormant minerals within states. Note that unregulated mining poses health and environmental hazards[821] to the communities, state and the nation.

FIGURE 9: MACDANIELS QUARY AND CONCRETE LTD SITE IN AMOFFIA NGBO, EBONYI, NIGERIA.

SOURCE: Researcher's site visit picture October 2014.

Ladan stated that Nigeria federal government misuses the Natural Resources Fund. The Nigeria government established the Development of Natural Resources Account, which was set up through an executive order in 2002[822] to develop alternative mineral resources to lessen the nation's dependence on oil and gas minerals. It was noted that from March to October 2010, the government drew huge sums of money (about N57.59 billion) from the account for payment of monetization arrears for staff of the Power Holding Company of Nigeria. Loaned to Consolidated Revenue Fund to accelerate capital budgets of about N70 billion and withdrawn to fund reversal of excess crude distribution of N4.3 billion. Although, the withdrawals are called loans, there is no evidence to showing it have been defrayed.[823] The revenue sharing laws provide that 3% of funds accruing to the Federation

[821] The recent case of lead poisoning in Zamfara State is one of the saddest examples of this impact. See Special Report of the Weekly Trust Newspaper, Abuja: Zamfara Lead Poisoning: Digging Grave in Search of Gold at pp.14-15. The Human Right Watch has noted the cases of lead poisoning and gold mining in Nigeria's Zamfara State as a heavy price to pay on illegal and non-expert mining without recourse to environmental protection and sustainability. See http://www.hrw.org/sites/default/files/related_material/Nigeria_0212.pdf accessed on 20/4/2015.

[822] It has been shown by the records that since establishment account, funds in the account have hardly been used to achieve its purpose. "Instead, the Federal Government has been drawing the monies to pay for items that should have been budgeted for – like monetization arrears for PHCN staff and fertilizer procurement contracts. Since 2004, government withdrew a total of N701 billion for purposes other than development of natural resources". See Daily Trust Newspaper, Abuja, Monday, July 23, 2012 at Pp. 1 and 5.

[823] See again Daily Trust Newspaper, Abuja of Monday, (July 23, 2012) at pp. 1 and 5.

Account should be remitted to the natural resources account. This account was set up by government to make the revenue sharing formula to conform to the Supreme Court ruling of 2002.[824]

This fund was supposed to be accessed by all tiers of government especially states where mineral recourses are vastly deposited. It is to be channelled towards the development of natural resources and diversifying the national economy at all levels outside the oil sector.[825] Obviously, misplacement of priority and none implementation of policies devastate development of solid minerals. State like Ebonyi who would have derived fund from such account to develop her vast mineral resources deposits can no longer access it. The output affects the national economic development and stability in Nigeria. The Ministry organized an investment solicitation campaign in China in 2009.[826] This was aimed to showcasing the opportunities, viabilities and incentives in Nigeria's mining and solid mineral sector in general. The impact of this trip was not felt in Ebonyi State solid mineral sub-sector and other states in Nigeria to bring to forefront of solid mineral revolutionary.

States' solid mineral sector needs total review and redesign of its geological maps. It requires producing geological and mineral maps for every local government. This should be digitalized in order to make them accessible and attract local and foreign investors to develop state solid mineral subsector. Local miners and artisans need to be educated and reoriented to understand implications of their activities and widen their horizons in local markets. This will rework the state's geodetic network and make the sector more feasible. It is cartographic representation to facilitate accurate determination and charting of mineral titles in states and national economy in productive manner. A successful implementation of this proposal will revamp and consolidate this sector and the country's economic diversity will shore up the state and federal revenue base.

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[824] In *AG Federation v AG Abia States & 35 Ors* supra. But the government then approved periodic withdrawals from the account to the tune of N270 billion between October 2004 and May 2007 for sundry expenditure that had nothing to do with natural resources development.

[825] Ladan, M. T. ibid. Early July 2012, at a Senate committee hearing, Permanent Secretary of the Ministry of Finance stated that a total of N873.4 billion had accrued from the account of the natural resources over the years but it was depleted by N701.48 billion. Noting further that the cumulative balance in the account as at June 30, 2012 was N17.9 billion, he said, "adding all releases from the fund is based on approvals from Mr. President".

[826] CISLAC supra. The theme was "Creating a sustainable and Investor-Friendly Framework for Mining in Nigeria" from November 27 to 29, 2009.

The Environmental Impact Assessment (EIA) system in Nigeria is the single most important tool for solid mineral exploration and environmental management in Nigeria. It could also generate reasonable income to the government if well managed. The mineral law provides Federal Ministry of Environment with the implementation mandate. It requires that the process of EIA be mandatorily applied to all major developmental projects. This means from planning stage to ensure that conceivable environmental problems are guided. Also to safeguard it throughout the project cycle, including appropriate mitigation measures to address the inevitable consequences of development. Revenue collected by Ministry as registration fee for EIAs for 2010 was 450,000 Naira. The Central Bank of Nigeria collects revenue for Nigerian Exports Supervision Scheme (NESS), which is 0.5% of the value of the exported goods. The total amount collected for export of goods related to solid mineral was 74,977,034.18 Naira in 2010.[827] It is in doubt if these revenues are been collected in Ebonyi State due to its nature of mineral exploitation.

The government and stakeholders like those involved in the Nigeria Extractive Industries Transparency Initiative (NEITI) that worked in the petroleum sector were very supportive for the new development which includes the solid mineral sector. The NEITI that works in the petroleum sector has been very successful and they all expressed willingness to participate and provide the necessary data in the solid mineral sector. NEITI had identified that the present group of government agencies in the oil and gas industry involved in the NEITI process comprised the following Offices:

i. The Department of Petroleum Resources-(DPR).
ii. The Nigeria National Petroleum Corporation-(NNPC).
iii. The Federal Inland Revenue Service-(FIRS).
iv. The Central Bank of Nigeria-(CBN).
v. The Crude Oil Reconciliation Committee.
vi. The Petroleum Products Sales Reconciliation Committee.
vii. The Office of the Accountant-General of the Federation-(OAGF). [828]

[827] See generally 'Federal Republic of Nigeria Extractive Industries Transparency Initiative (NEITI) NEITI Secretariat Scoping Study on the Nigerian Mining Sector Trust Fund' No. 95381; Project No P114267 (Final Report, 2011) p. 20.
[828] Ibid.

These will make ease the administration of the sector. However, it failed to conceive the importance of the solid mineral revenues in the national economic development and sustainability. It did not involve the law of solid mineral resources. NEITI concluded that this group should be expanded to include the Permanent Secretary in the Ministry of Mines and Steel Development (MMSD), the Mining Cadastre office (MCO) in MMSD, the Nigerian Geological Survey Agency (NGSA) in MMSD as well as Nigerian Shippers Council (NSC)[829] in order to give this sector face-lift in national economic development. It is imperative to consider the State Ministry of Commerce and Industry or Solid Mineral Department of each state. The later will liaise with the immediate landowners, communities and local authorities for better management of the solid mineral revenue generation and environmental management.

Note that oil companies covered by the NEITI processes fall into two categories enumerated above. The first category fall within the companies' joint ventures with the Federal Government while the second category comprises are those involved in exploration and production. The system is desirous in the management of solid mineral exploitation to maximize profits, stabilize the law and diversify the economy. It will enhance the administrative skills of the sector with good monitoring.[830] But, there will be no economic diversity without the enabling laws. This will give opportunity for a better non-oil mineral production output. Some are been left with paltry balance after payment of worker's salaries with virtually no state projects. Therefore, creating opportunities for states laws on solid minerals will allow states with power to explore the sector.

Nigeria today is in a wave of market reforms in many segments of its economy. This includes the privatisation of government owned companies like NEPA, NITEL and mining assets. The Mineral and Mining Act of 2007 creates administrative departments but sited all in the federal capital territory Abuja whereas; solid minerals are found across states of Nigeria. Nigeria deregulated fuel prices which began with a programme of fiscal and monetary management with attempt to review the country's fuel subsidy policies. More recently, other reforms came as the country is attempting to modernize and strengthen the banking system to sustain the sector by making loan flexibility for investors. Solid mineral

[829] Ibid.

[830] It will reduce states' dependence on federal allocation as being witnessed leaving many states to owe worker's wages for months.

will enhance these policies. For the past sixteen years, the country has just seen first uninterrupted civilian rule[831] which is the longest term since 1960.

Diversification of the Nigeria economy usually appears in government proposed policies without any implementation. This is due to the country's overbearing on oil without looking into solid mineral sector. It is imperative to state that policies must be channelled through possibility of pulling the nation out from an oil dependent economy to an economy that can be sustained through other resources. These include the mining of solid mineral resident in the country as enumerated above. This is how the economy can be sustained in Nigeria with very good opportunities to reducing the economic meltdown witnessing in oil. Power supply needs to be improved to achieve these proposals. The efforts by the government for a solid foundation for the effective take-off of stable power supply in Nigeria seemed mirage. The successful privatization of power sector is yet to be achieved.

Notwithstanding the barriers of implementing this economic-turner-around as identified, it was noted that the inclusion of the solid mineral sector in NEITI activities would help to instill transparency and accountability. Many stakeholders felt that, there is genuine commitment in government to increase transparency and accountability in the management of natural resources.[832] There is considerable public interest in ensuring that either revenue from solid mineral resources exploitation is used to help develop mining communities as proposed by PIB and Content Act. Also to ensure that mining companies pay what they are expected under the law. Many stakeholders observed that the success of NEITI in the petroleum sector is a clear indication to be included in the solid mineral sector in Nigeria. One negative impact of NEITI – Executive Industries in Nigeria is that there is no law regulating its activities leading to no disclosures of the owners. This promotes corruption and disillusions in enforcing related laws.

Government needs to know that developing a comprehensive work-plan and total overhauling of solid mineral is an important prerequisite for law and policies

[831] The February and March 2015 elections saw the country's sixteen years of continuous civilian administration - democracy and the first civilian-to-civilian transfer of power to an opposition party from ruling and governing party in the history of the country without arms or coup d'état. Maintaining this pedestal will make its attempts on economic recovery and diversification more meaningful.

[832] NEITI has already shown that they in a professional way can handle the above subjects needed to develop regular yearly work plans. See Federal Republic of Nigeria Extractive Industries Transparency Initiative (NEITI) NEITI Secretariat Scoping Study on the Nigerian Mining Sector Trust Fund No. 95381; Project No P114267 (Final Report, 2011) Pp. 50 – 51.

implementation. It is recommended that the national and states solid mineral work-plan is setup to provide the following:

(a) Bringing together stakeholders – foreign and local investors;

(b) Removing barriers to implementation – corruption and non-adherence to the rule of law and due process by the beneficiaries, government or miners;

(c) Building capacity in Government – productive policies and better administration;

(d) Building capacity in companies and civil society to promote due processes and revenue generation.

The problem militating against Nigerian's political and legal system is predicated on the political structure that the country operates. Nigeria is not among the known manufacturing nations despite her huge mineral and human resources. But it masters in duplications and dogmatically following other nation's style of governance. Been colonized by Britain, Nigeria failed to copy her colonial master or continue with the generally accepted 1963 republic constitution rather. Rather, it adopted a political system akin to the USA. Inexplicably, it failed to copy well. It abandoned such practices such as system of electoral colleges, private ownership of real property, mineral or devolution of power on mineral resources control to regions. Since the country has no model to compare its political and legal system or structure of government, it seems it practices a 'political mixed-economy'. This is because it has manufactured 'a monster – 'corrupt' system' that supports diversion and embezzlements of public funds through the present theory. Revisiting the era of regional resources control under the 1963 constitution will revitalize the solid mineral development.

The inability of the national legislators to outline a bold set of prescriptions for Nigerian perennial legislative malaise has gone a long way to expose the country.[833] With profound sense of honour, this research concludes that the executive and legislators under social contract are saddled with responsibility to get it well but their failures have left Nigeria's legal and political system disillusioned. There was no serious measure of deliberations and legislations in business of mineral governance since the civil war in 1970. There is no law on solid mineral encompassing 1963 republic constitutional intents which recognized federated unit. This is due to the National Assembly's monotonous leadership and deep

[833] It is little more than a patchwork of 'strange interests' and bedfellows driven by a craze for power and not just for governance or masses interests.

deformation with its elite regional sentiments. Constant military incursions and their decrees today formed Nigeria laws which affect the sector from flourishing. Ebonyi State has been through hurdles of infancy since creation and slowly grooming into adolescence.[834]

The realization of these international competitions and investment funds may drive the recent efforts of the State and Federal Governments towards the creation of an orderly and sustainable development in Solid Mineral Sector. Some strategic minerals in Ebonyi Sate have been promoted by the leadership of the Solid Mineral Ministry who prioritized the development of seven strategic minerals.[835] These include Coal, Bitumen, Limestone, Iron Ore, Barytes, Gold and Lead/Zinc. There are world class minerals and have been carefully chosen for development in view of their strategic importance in global market. Their qualities and availabilities are sufficient to sustain solid mineral mining operations for decades. These minerals are in commercial quantity in Ebonyi State and could give the state and the country good income and international boost. The Nigerian government policy thrust on the mining sector is anchored on the need to develop private sector led mining industry with government restricting its role to that of a regulator. Diatomite mining is found in Alangafe in Yobe State, Nigeria[836] while Gold mining site in Russo in Kaduna State can boast if well harnessed.[837]

The Nigeria non-oil mineral is significant with number of different species distributed around Ebonyi State. Though, it is not all the mineral that will ultimately have viable reserves for exploration. Government needs to increase sustained efforts to delineate and objectively encourage investments in the sector to decipher their productivity. This is crucial in order to diversify the national economy from oil and gas economy. Though, the new Greenfield mines are not the only option as the country focuses on oil but a single

[834] The state is a leading producer of farm produce such as rice, yam, potatoes, maize, beans, and cassava in Nigeria. It has several solid mineral resources, including lead, crude oil, and natural gas, but few large-scale commercial mines. The state government has, however, been speculated to have given several incentives to investors in the agro-allied sector to encourage production. The impacts of such incentives are yet to be felt as these solid minerals deposit are still dormant. Note that Ebonyi is called "the salt of the nation" because of its huge salt deposit at the Okposi and Uburu Salt Lakes in Ohaozara Local Government Area.

[835] The mining sector is now a global industry with many countries competing for exploration funds. The fierce international competition suggests that mining companies and their investment funds would only go to those countries where the enabling environment would allow the private sector to flourish without hindrances.

[836] Nigeria Extractive Industries Transparency Initiative (NEITI), ibid at p. 52.

[837] Source: Federal Republic of Nigeria Extractive Industries Transparency Initiative (NEITI) NEITI Secretariat Scoping Study on the Nigerian Mining Sector Trust Fund No. 95381; Project No P114267 (Final Report, 2011) p. 11.

economic strategy makes the national economy wobbling. It is on record that Nigeria has beforehand explored mines that could today be re-opened for businesses.[838] The gold mining opportunity in Nigeria could be very much like that of Ghana if well explored. Accordingly, such need not be abandoned to enhance national economy.[839]

NIGERCEM Cement Plant was the biggest government owned cement industry in Nigeria. It sustained the then Anambra State for years. This was due to the huge sums of limestone found within the state today known as Ebonyi. The Cement Plant had over the years took care of construction of all major structures and construction works through the eastern part of the country and beyond. These include the Niger Bridge construction at Onitsha in Anambra State, Enugu Mega City in Enugu State, Owerri capital development in Imo State, Port Harcourt Mega City in Rivers State, ancient Calabar town in Cross Rivers State were all built from NIGERCEM[840] cement since its establishment in 1954. These structures had since been abandoned due to the poor management and subsequent emergence of petroleum in Nigeria. The same applies to other solid mineral industries. The position of the law on these moribund industries is not seen.

FIGURE 10: ABANDONED STRUCTURE OF NIGERCEM PLANT IN AMOFFIA NGBO, EBONYI STATE.

SOURCE: Researcher's picture on site visit October 2014.

[838] These include coal, limestone and so many others. The Geology of Nigeria is comparable to those of other countries where world class solid mineral deposits have been found.

[839] Some of the known minerals include: Gold, Coal, Bitumen, Iron-ore, Tantalite / Columbite, Lead / Zinc Sulphides, Barytes, Cassiterite, Gemstones, Talc, Feldspar and marble as noted in this work.

[840] NIGERCEM was the first cement plant ever to be established in Nigeria in the year 1954. This was privatised in 2002. But prior to its sale, it was owned by the federal government who had 11 per cent with the five south-eastern states 65 per cent and the general public had 24 per cent respectively. The sites have been abandoned.

FIGURE 11: ABANDONED CEMENT CRUSHING MACHINE OF NIGERCEM PLANT IN AMOFFIA NGBO

SOURCE: Researcher's picture on site visit October 2014.

FIGURE 12: SUB PLANT CEMENT FACTORY OF NIGERCEM SITUATE AT AMOFFIA NGBO

SOURCE: Researcher's picture on site visit October 2014.

The limestone with the gypsum that ran the cement plant was mined in the state too. These principal raw materials are still lying idle waiting to be tapped in the state over the years. This gypsum resource kept the NIGERCEM industry going throughout its operation which suddenly ended in mid 1990s. The material lives transversely in Nkalagu in Ishielu and within Edda in Afikpo, Azu Inyaba in Izzi, Amoffia Ngbo in Ohakwu all in Ebonyi State.

The limestone could serve as raw material for the production of hydrated lime. Among eleven states in Nigeria with huge deposits of limestone, Ebonyi tops the list with this raw material in commercial quantity.[841] Despite the presence of this raw material in Ebonyi State, Nigeria still dependent on importation of their input needs. Nigeria spends over one billion naira annually for the importation of hydrated lime.[842] The state government in conjunction with Nigeria Raw Materials Research and Development Council (RMRDC) should ensure that hydrated lime processing industry is immediately established in Ebonyi State to promote the national industrial revolution.

FIGURE 13: ABANDONED QUARRY SITE IN EBONYI STATE.[843]

SOURCE: http://www.panoramio.com/photo/48498334. Accessed 27/2/2015

Ebonyi State is endowed with more than twenty six solid mineral resources in commercial quantity ready for extraction. But most of these minerals are yet to be exploited commercially. The presence of the material makes the state viable for local and foreign investors' nest and destination. The resources are at different low stages of development

[841] Ibid. Also, over 7.5 million tons of barite has been identified in Taraba and Bauchi States with over 700 million tonnes in other states. Zinc/lead estimate is put at over 10 million tonnes spread across eight states of the federation.

[842] Hydrated lime is a bye-product of limestone. It is in health application and effective acid neutralizer as noted by the Stakeholders Workshop on Harnessing the Economic Potentials of Limestone as an Industrial Mineral, "Production of Hydrated Lime", Organized by the Raw Materials Research and Development Council (RMRDC) in collaboration with the Department of Cement Production and Mineral Development, Ebonyi State, in Abakaliki, Ebonyi State, (6th September, 2012) Pp. 8 – 9.

[843] Similar dams artificially created by stone blastering or crushing and other miners are all over the state's mineral extraction sites numeral to mention – almost in all local governments of the state.

where it is not lying shiftless.[844] This makes the state to spend its diminutive resources on issues of less economical important but which must be done to brook the state environmental sustenance.

FIGURE 14: LATRITE/SAND QUARRY SITE IN EBONYI STATE

SOURCE[845]

Considering its contributions to the nation's GDP[846] and Natural Resources Account, solid mineral production increased in 2008. These minerals are partially tapped; provisional data had showed that aggregate output increased from 35.6 million tonnes in 2007 to 40.2 million tonnes in 2008.[847] The development was accounted for by the substantial increase in the production of all the principal minerals - stone aggregates, limestone, sand, marble aggregates, gold and lead, zinc etc. The production of stone aggregates was 3.6 million tonnes in 2008 as against 2.9 million tonnes in 2007. However, less than 20% of such production came from Ebonyi State since the end of NIGERCEM Plant. The

[844] Where tapped, most of the development is done by informal, none experts and artisanal miners who lack the appropriate technological know-how, legal rights or funds to go in full production. They leave a devastated landscape which adversely affects the various environmental media and its resources like water, soil and food crops as well as the health of humans and animals.

[845] Ibid. One of the many sand quarries tapping the clean white sands in the state.

[846] Gross Domestic Product - GDP" This is the monetary value of all the finished goods and services produced or rendered within a country's borders in a specific time period of time. Although, GDP is usually calculated on an annual basis, it includes all of private and public consumption, government outlays, investments and exports less imports that ensue within a distinct territory. Countries are sorted by nominal GDP estimates from financial and statistical institutions, which are calculated at market or government official exchange rates.

[847] Central Bank of Nigeria; Annual Report and Financial Statements for the Year (31st December, 2008) at p. 97.

commencement of gold mining by a Chinese company in Osun State, with an investment of about N1.0 billion (US$7.7 million), had added to the growth of gold production. The production of limestone, sand, marble aggregates, lead, zinc and gold increased by 19.2, 13.8, 12.6, 10.7 and 11.1 per cent. The production of barite, cassiterite, iron ore, shale columbite, clay and laterite increased in 2008[848] as acknowledged by the report.

FIGURE 15: DOLERITE QUARRY SITE IN AFIKPO, EBONYI STATE LOCALLY EXTRACTED.

SOURCE: http://www.panoramio.com/photo/48498334. Accessed 27/2/2015

Reason for a long delay from investing in non-mineral from oil is traced to the previous attitudes of the government prior to creation of Ebonyi State in 1996. Despite the enormous mineral resource within the Abakaliki district of old Anambra State, the period experienced poor governance of solid mineral which left NIGERCEM grounded. Leaderships who were known for their notorious military eccentric dictatorship and their antics culminated to corruption that lingers to the present administration. Many sustainable mineral resources were not looked after within the period. The federal government was solely breathing through the national hydrocarbons while the states depend on their monthly allocation of oil incentives.

Overburden on oil as sole income generation escapade was vehicle by abandonment of solid mineral sector across the states resulting to the state and federal economic woes. A

[848] See generally Central Bank of Nigeria (2008) ibid at p.97.

continuation of overload on oil may lead to the state and the nation's total collapse if crude price continues to dwindle or that oil is no more. Ebonyi was once thriving industrial hub in strategic areas[849] that employed thousands of people across the country and beyond about three decades ago both in solid mineral and agricultural[850] sectors. Nigeria survived mainly from solid minerals - coal and agriculture before the advent of crude oil. Lead has been mined since precolonial times while limestone was been quarried at NIGERCEM cement plant. These sectors remained the state and national best option for economic resilience and autonomy. There is need to restate the commitment on developing them to reduce unemployment, infrastructural degeneration, economic wavering and over reliance on oil economy. This research identifies that these necessitate needs for diversification.

Improvement in this sector was constrained by ethnic chauvinism, paucity of funds, poor technical know-how, maladministration, mineral-landownership split and equipment obsolescence[851] found at mining sites. Record has showed that despite the quantum of these resources in Ebonyi, Osun and other states, the state still finds itself in industrial famine to explore mineral resources in support of the economy. Production of other minerals, such as cassiterite, columbite, clay, marble aggregates, lead/zinc, shale, laterite and iron ore, however, declined in the period under review compared, with 2008[852] experiences. It will attract foreign and local investors with expertise and fund to aggressively industrialize states solid mineral sector. Limestone, dolomite and dolerite could give a good commercial quantity. Supply for cement, animal feed, glass, construction work, water treatment, tanning, chalk and other usages. Coal is still needed for commercial purposes. It is vastly beneath the state land in commercial magnitude. It is used for energy and power generation, train, batteries, pencils, make ups kits. This area has been abandoned leading to the poor energy power generation, supply and rail transportation in Nigeria. The importance of non-oil minerals is immeasurable.

[849] The NIGERCEM Cement Plant located at Nkalagu in Ishielu and Amoffia Ngbo as noted always comes to mind. This Plant has collapsed and machines worthy millions of pounds are rusting and decaying. At the same time, employees have lost their jobs and benefits.

[850] The majority of Ebonyi people are poor and peasant farmers. Abakaliki like some other parts of the state are popularly known for their great farm produce. The landscape is amazing, changing seamlessly from green lush, to savanna grassland, all dotted with farm produce - cassava, yam, rice, maize, okro, melons, farms and then with its diverse eco-system. Abakaliki is the state capital and the largest city in the state.

[851] See Annual Report and Financial Statements ibid at Pp.96 - 98.

[852] Central Bank of Nigeria (2008) ibid p 99. As noted, solid minerals production increased marginally in 2009 relative to the preceding year as the country witnesses more democratic stability. Provisional data showed had remained that aggregate output increased from 40.2 million tonnes in 2008 to 41.0 million tonnes, representing an increase of 20.0 per cent. The increase was accounted by the increase production of limestone mainly in various states of the country.

Under the Mineral Act, there is no environmental authorization required to conduct reconnaissance. Environmental authorization is needed in the case of exploration or mining. On outset, there must be a community development agreement between the lessee and the host community. Subsequently, the lessee must submit an Environmental Impact Assessment to the Mines Environmental Compliance Department (MECD). Lessee must submit to the MECD an Environment Protection and Rehabilitation Program containing details of environmental regulation.[853] The provisions required for the abandonment or closure of mines is stated in s.159 of the Act and the Minerals and Mining Regulations 2011. The starting point is the issuance of a notice to the relevant departments three months before the abandonment. There must be a report showing details and reasons for the abandonment or closure and another report to show mining activities up-to-date of the notice. Where the closure of mines is temporary, the Mines Inspector Department should be notified. The Mining Regulation 2011 puts the obligation on the exploration or mines rights holders to have a closure plan prepared in terms of sustainable development. This closure plan must be followed accordingly.[854] S 32 of the Regulations deals with the requirements and obligations for closure. These are not seen in practice as the enforcers are not on ground requiring state involvement in mineral development.

FIGURE 16: TILTED AMASERI SANDSTONE RIDGES OF AFIKPO IN EBONYI STATE. [855]

SOURCE: http://www.panoramio.com/photo/48498334. Accessed 27/2/2015.

[853] S.116 of Minerals and Mining Act.

[854] S.22 of the Minerals and Mining Act states that the use of land for mining operations shall have priority over other uses of land, as it constitutes an overriding public interest within the meaning of the Land Use Act. On the other hand, s.28 of LUA provides for the revocation of the statutory right of occupancy or customary right of occupancy, in the event of an overriding public interest, and mining is one such overriding public interest.

[855] Materials used for the construction of this road in the picture were still produced in Ebonyi State. The road is useful for inter-state, trans-boundary businesses and economic development in the country.

There is hardly any state in Nigeria that can equal Ebonyi in natural resources. There over 25 solid minerals in the state at commercial quantity that wait to be explored as illustrated below.[856]States will become major exporters of luxuriant non-oil and oil minerals. It will drive international relations, reduce the state over-dependency on federal revenue, and create employment opportunities. But the poor precepts, abandonment and illegal extraction with the local communities and the immediate landowners struggle for control grossly affect the sector. RMRDC produced compendium of the national natural resources endowment of the 774 local governments and 9555 wards in Nigeria. It noted that greater part of these minerals like limestone, zinc, lead, copper, gypsum, sand, salt, clay[857] etc are heavily undeveloped in Ebonyi State.

5:7 CONCLUSION

Extraction and processing of solid mineral resources required comprehensive legal framework. It is the pillar of any economy. This is witnessed in developed countries as the research has observed. There have been legislative and administrative efforts by government to develop non-oil minerals in Nigeria. But, it is important to give an enabling environment to investors through legal instrumentality. This is keen to the states with solid mineral resources but the law does not allow them. Other great dangers are; site abandonment, biodiversity damages, use of hazardous chemicals with potential health risk to mine workers, communities and none enlighten of local people. We found that these issues were not well featured in the present solid mineral laws in Nigeria. Its exploitation was majorly left in the hands of local, inexperience artisanal or informal miners[858] as seen across Ebony and other states.

The study reveals the needs for high level of awareness on mining of solid minerals in local communities. They have ignorantly used the activities of mining to their advantages due to lack of enforcement of federal laws. The researcher's site visits found that they have achieved little despite these activities. Solid minerals could be well mined and mechanised by professionals locally or internationally if the laws are fully enforced. Uncoordinated solid mineral exploration is a breach of law but the government has not prosecuted anyone

[856] The state is not known as one of the colossi in economic independence in Nigeria but it has viable mineral resources to compete with any state in the country. Therefore, if the state can resolve today to extract and commercialize her mineral resources, it will create new avenues that would lift its standing and possibly place it on a pedestal of economic self-reliance. It will also make the state less dependent on federal allocation and oil and gas sector. The state is an economic hotbed with the natural endowments that spot the entire landscape of Nigeria.

[857] This was noted in the Daily Trust Newspaper, Abuja Nigeria (28 of August, 2012) at p. 17.

[858] Akper, P. A., op cit.

outside police threats. There are usually legal sanctions associated with non-maintenances of health and safety standards. This may be enforceable in civil or criminal law. This is usually a function of regulatory bodies for such purposes as noted in this chapter. A corporate organization may eventually realize that the cost of non- compliance may be as immense as encroaching on the mining industries and national profit edge. The law needs to spell out relationship between federal, states, landowners and mining investors.

As a result of the Structural Adjustment Programme in Nigeria, national policies on encouragements of foreign investments and exportation of national goods changed. The government perceived the need to diversify the country's economy, which is heavily dependent on oil and agriculture, into other activities. In 1995, the Ministry of Solid Minerals promoted the drafting of a new Minerals and Mining Law. This law has not been amended to bring in new trends in solid mineral sector. There is needed for the establishment of related industries such as State Mineral Resource Development Agency - SMRDA. As well as State Medium and Small-Scale Coal Briquetting Enterprises - SMSCBE, so that coal briquettes can be supplied for domestic cooking, income generation and employment. Every process of solid mineral processes requires due process and therefore, provisions of Content Act and PIB if fully enforced need to be extended to non-oil minerals.

The new legal regime and mineral revolutionary will reduce ‘poor attention syndrome approach’ (PASA) to solid mineral and diversification. Mineral Act places some restrictions on the export of minerals that requires liberalisation. It provides for declarations to the Customs of the State where the mineral is extracted. Thereafter, there may be demands by the Customs of the State that the exporter of such mineral must furnish it with certain information relating to the mineral for export before exportation. Such should be taken administratively through SMRDA and SMSCBE. The Act should provide enabling environment for memorandum of understanding between States, Federal and Expatriates investors to carryout solid minerals businesses.

CHAPTER SIX

INTERNATIONAL COMPARISONS

6.1 INTRODUCTION

The global circle has recently seen an increase in understanding the needs to liberalize property rights to secure and maintain high level of hydrocarbon resources. This is aimed at meeting the overall energy requirement for industrial use and its macroeconomic strength, thus, concretizing reliable economy. The impact is felt more in advanced nations where oil and natural gas provide over three-fourth of all energy consumption.[859] The above concept has strengthened their legal systems and enforcement strategies.

The chapter considers developed and developing nations' laws and practices of landownership, mineral and environmental management. Nigeria constitutional democratic system is akin to the US but failed to adopt US legal approach. The nation did not consider a liberal constitutional practiced of the US. This research considers US ownership theory where the historical background of oil and gas' manifested since 1859. US has her first oil well in Pennsylvania State. Federal system has helped American constitutional development and generally liberalised contentions of property rights. Nigeria being colonised by Britain adopted most of her laws. Yet, Nigeria cannot be said to be practising British legal system. The research considers Canadian legal approach in resolving the aboriginal land cases which is keen to this research.

It studies other countries with similar experiences like Nigeria such as Iraq, New Zealand, Venezuela and Scotland in UK. The writer compares these regions with Niger Delta Nigeria in instances of power devolution and development. It notes India, South Africa, and Kenya that have relaxed their environmental rights and non-justiciability clauses. Property and environmental rights are important issues under the international laws. Therefore, comparative study enhances the understanding of the law and loopholes in enforcements of Nigeria land, mineral and environmental laws that form the subject of this research. It examines the principles of central control with advanced countries.

It is our aim to study if a central control of resources with a minimum share set for oil producing states is opposite to true federalism.[860] Also, whether states and local

[859] Example of such nations is the United States. See Public Affairs Clearinghouse, *Energy: a Guide to Organizations and Information Resources in the united states* (2d ed. 1978) p 69.

[860] See 1960 and 1963 constitutions are instructive as cases of study.

communities' ownership based principle is an alternative considering advanced federal system and allocation based structure. Under the state allocation, it will note private ownership theory as practiced by federated states like Texas, California, and Ohio in US, Scotland in UK and Alberta province in Canada. There will be a critique of the present central approach to petroleum resources on how it promotes contentions, litigations and political unrest in Nigeria.

6.3 THE UNITED STATES MODEL

In assessing ownership of oil and gas in US, Mieszkowski and Soligo stated: "the history of oil in US finds its origin in the east coast state of Pennsylvania in 1859. From then until the 1940s, the petroleum output of the United States grew to be the largest in the world accounting for a hefty 63% of the world's oil production".[861] America produced over 9.1 million barrels of crude oil per day by 2009[862] placing the country[863] among the league of top oil producers in the world behind only Russia and Saudi Arabia. This has since risen overtime.[864]

The question of rights over mineral oil has legally evolved in US. In defining rights and control of exploring oil minerals, Ohio Dormant Mineral Act states that;[865] "drilling or mining permit means 'a permit issued under Chapter 1509, 1513, or 1514 of the Revised Code to the holder to drill an oil or gas well or to mine other minerals". It noted that: "any mineral interest held by any person, other than the owner of the surface of the land subject to the interest, shall be deemed abandoned and vested in the owner of the surface, if none of the following applies". The mineral interest is held by the United States, regional states,

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[861] Charles Ebinger, John P. Banks and Shackmann Alisa, 'Offshore Oil and Gas governance in the arctic: A leadership Role for the U.S. Energy Security Initiatives', Policy Brief 14-01, (March 2014). http://www.brookings.edu/~/media/Research/Files/Reports/2014/03/offshore%20oil%20gas%20governance%20arctic/Offshore%20Oil%20and%20Gas%20Governance%20web.pdf accessed 2/06/2014.

[862] Peter Mieszkowski and Roland Soligo, 'The Governance of Oil and Gas in the United States' (Washington: World Bank Conference on Oil and Gas in Federal Systems, (2010). <http://siteresources.worldbank.org/EXTOGMC/Resources/3369291266445624608/USA_Conference_Final draft_Feb10.pdf> at page 3 accessed 2/06/2014. Also see Peter Mieszkowski, Roland Soligo, "Oil and Gas Governance in the United States," Forum of Federations via http://www.forumfed.org/libdocs/2010/Mex-oilgas/Soligo-Mieszkowski.pdf accessed on 14/06/2014.

[863] See as noted by the *Energy Information Administration, US Department of Energy, Independent Statistics and Analysis: Top Ten World Oil Producers 2009, Energy Information Administration* Online, available from <http://38.96.246.204/countries/> , accessed 1/04/2014.

[864] Given the large size of the world's economy, it is no wonder that with a contribution of only $159 billion to a total gross domestic product of some $13.2 Trillion, the petroleum industry constitutes a relatively small part of the American economy.

[865] 1989 - 5301.56. See s 2(b)(1).

any political unit, body politic, or agency of the United States.[866] On whether the Heirs to natural gas and oil beneath land properly assert their claims to keep those rights were determined pursuant to the provision of Dormant Mineral Act. This multiplicity action entails that court must determine parties that are entitled to the mineral rights underneath '90.2063 acres of property located in Harrison County in Ohio. The courts had determined this in *Phillip Dodd et al. v John Croskey et al.*[867]and *Chesapeake Exploration, L.L.C., et al. v Kenneth Buell et al*[868]. In *Phillip Dodd et al.*, they argued:

> That the Porter heirs met the requirements of option (a); "The document filed by Croskey on December 23, 2010 was termed an 'affidavit' because it was subscribed and sworn to by him," the attorneys maintain. "But it was clearly a claim to preserve under R.C. §5301.56(H)(1)(a), as the trial court held, and not an affidavit under (H)(1)(b) identifying a savings event described in (B)(3) of the [act]. The Croskey Affidavit Preserving Minerals complied in all respects with the requirements of R.C. §5301.56(C)".

There is a "responsibility to make sure that questions of state law are 'settled right,' not that they are just 'settled" where Clay, J., concurred in this preposition in *Rutherford v Columbia* Gas.[869] 'This rationale is all the more compelling where, as exemplified, the state's highest court has yet to address an issue directly and the federal courts are called upon to 'predict' what that court would do." The Court may sua *sponte* certify a question to the Supreme Court of Ohio.*[870]* The certified questions of the law were settled for the reasons set forth above. The undersigned certifies the following questions of state law unlike Nigeria legal systems.[871] While Nigeria appears to be lacking states' mineral laws or having weak federal legislations on oil mineral, in US, the determination to this was based on Ohio Dormant Mineral Act 1989-5301.56-ODMA:

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[866] This is generally held as described in division (G) of s 5301.53 of the Revised Code. See ODMA s 2(B)(C)(ii) supra.

[867] *Phillip Dodd et al. v John Croskey et al* Case no. 2013-1730 Seventh District Court of Appeals (Harrison County).

[868]*Chesapeake Exploration, L.L.C., et al. v Kenneth Buell et al* Case no. (2014) 0067 U.S. District Court for the Southern District of Ohio, Eastern Division. The parties through their cross-motions for summary judgment, ECF Nos. 38, 39 filed for this determination. Plaintiffs filed a motion for leave to file a reply in opposition to defendants' motion for summary judgment, ECF No. 50, which defendants opposed, ECF No. 51. For the following reasons, the Court defers ruling on the summary judgment motions, certifies two questions of Ohio law to the Supreme Court of Ohio, and stay the proceedings. This is because federal courts act as outsiders.

[869]*Rutherford v Columbia* Gas 575 F.3d 616, 627 (6th Cir. 2009).

[870] 4 *Planned Parenthood,* 531 F.3d at 408 with decision in *Elkins v Moreno* 35 U.S. 647, 662 (1978).

[871] See Supreme Court of Ohio pursuant to Rule 9.01 of the Rules of Practice of the Supreme Court of Ohio. There is no such law or practice in Nigeria.

1. Is the recorded lease of a severed subsurface mineral estate a title transaction under the ODMA-Ohio Revised Code § 5301.56(8)(3)(a)?

2. Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the ODMA at the time of the reversion?

There has been actual production or withdrawal of minerals by the holder of lease from the lands and others from land that are covered by a lease to which the mineral interest is subject. Question on 'oil from land pooled, unitized, or included in unit operations, under ss 1509.26 to 1509.28 of the Revised Code', the mineral interest partaking, provides that the instrument or order creating or only if for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county.[872] It could be argued that legal instruments on oil and gas are strengthened in US to avoid energy insecurity or its fears. US has always legislated and regulated its use, control and supply.

In Europe, there are two main sources: gaps in the integration of the European energy market, in regions such as Central and Eastern Europe, and disruptions of imports. This is to combat these problems. The Energy Union strategy in Europe focuses in two of its five dimensions on removing energy islands and bottlenecks from the infrastructure map of Europe. Their rules and policies are channelled to developing solidarity mechanisms for preventive planning and emergency responses for scenarios where supply is disrupted.[873] In the context of increasing demand and declining supply, the importance of Russia as a partner in European gas becomes abundantly clear.[874] In Nigeria, poor legal frameworks impoverish the practice resulting to recession and economic meltdown. Oil and gas producing states in the US have sought greater control over their energy resources.[875] But central governments of Nigeria has only paid lip legal services to these demands by regional authorities[876] with clear indication of continued confrontation climate.

[872] ODMA s 2(b)(c)(ii) supra. The land which was subject to the pooling or unitization is located. Such Nigeria cases are entertained by the Federal High Court and not state courts.

[873] Chi-Kong Chyong & Louisa Slavkova & Vessela Tcherneva, 'Europe's alternatives to Russian gas', published online on *9th April, 2015* accessed on 2/3/2016 via http://www.ecfr.eu/article/commentary_europes_alternatives_to_russian_gas311666#

[874] ibid

[875] Nagy Gretchen E. ibid pp 246 - 247

[876] See as illustrated above on Saro Wiwa and Ogoni people issues and federal government.

Under USA laws, several theories have emerged as to whether oil and gas is capable of being owned individually by private persons, local communities, regional states or federal governments. The criteria for such ownership are being contended as they emerged. In jurisdictions of Ohio, *Phillip Dodd et al. v John Croskey supra* is instructive. In Texas (USA), Canada Provinces, New Zealand and Scotland in UK, these theories are now been practiced and recognized as we will see soon. Individual or regional mineral and landownership is given recognition, though mostly in fee simple while others are been devolved with more powers. Fee simple is the greatest possible estate in land wherein the owner of the land could use it exclusively and possesses it without interruption of any other person. It can be transferred to the owner's successors or heirs unlike Nigeria's certificate of occupancy that is revocable under s.28 LUA.

This theory of ownership is known as absolute ownership. Here, an owner of a piece of land assumes the right and owner of the petroleum lying beneath his land. This fee simple ownership is capable of being defeated. It is argued that the hydrocarbon-substances wander from one place to another beneath the surface of the earth. For example: If Mr 'A' owns a petroleum underneath his land, he might rightfully claims he owns the petroleum underneath, but if the petroleum move underneath from Mr. 'A's land to 'B's land, A in law has no right to reclaim the petroleum that had moved. Then, his right of ownership in this case has been defeated.

In *Texas v New Jersey,*[877] US Supreme Court held property to revert by escheat[878] to state of Texas rights having established most significant contacts with the subject of litigation. Texas was held to have the best claim to escheat every item of property involved in the case as noted in *Mullane,*[879] *Atkinson.*[880] Nigeria has no such development or similarity as land is held solely by Governor. There is possibility of choice of law in private litigation

[877] *Texas v New Jersey* 379 U.S. 674 (1965).

[878] The term Escheat is a reversion of property to the state, or (in feudal law) to overlord, where owner dies without legal heirs. It is a common law doctrine that transfers the property of one person who dies without heirs to the crown or state. It serves to ensure that property is not left in "limbo" without recognized ownership. In instances, legal interest in land is destroyed by operation of law, so that the ownership of the land is reverted immediately to superior feudal-lord. In England and Wales, this was destroyed by the Administration of Estates Act 1925; however, the concept of *Bona vacantia* means that the crown (or Duchy of Cornwall or Duchy of Lancaster) can still receive such property. Under Land Registration Act 1925 of England, only estates in land (freehold or leasehold) could be registered while "royal demesne" (property held by overlord), is not held under any vestigial feudal tenure making such freeholds not registerrable creating drain of property. The Land Registration Act 2002 was passed to this response of Law Commission making land held by crown registerable.

[879] *Mullane v Central Hanover Bank & Trust Co* 339 U. S. 306.

[880] *Atkinson v Superior Court* [1957]49 Cal.2d 338, 316 P.2d 960.

regarding oil interest in the US unlike Nigeria as established in *Texas v New Jersey*. In the matter, tangible property, real or personal has always been the unquestioned rule in all jurisdictions of US that only the State in which the property is located may escheat. The same principle applies to oil and gas ownership claim. This fact established right of private person or regional authority over property in oil minerals unlike intangible property. Where there is no constitutional provision in a particular matter relating to ownership of oil, the court adopted a rule which will settle the question of which State will be allowed to escheat this intangible property.[881]

In Nigeria Littoral case, the Supreme Court took to US decisions. Decision of the court where there is lacuna on legislation should have been based on public policy despite its difficulty to ensure rule of law prevails. Courts usually examine the circumstances surrounding each case for determination. The uncertainty of any test which would require the court, in effect, either to decide each escheat case or mineral oil ownership on the basis of its particular facts is to devise new rules of law, apply it to ever-developing new categories of facts. Without this, it creates uncertainty, threatens more litigations. This is exemplified in the Nigeria Littoral case.

Lawrence Atsegbua[882] had argued that petroleum is not capable of being owned under qualified interest theory until it is captured and reduced into possession as practiced in Pennsylvania. Here, Mr. A's ownership is qualified and he can only claim ownership of petroleum if he reduces it into his possession. This theory is derived from the concept of 'feral naturae' (wild animals).[883] This is because since in law, wild animals are not capable of being owned by any individual except when captured and reduced into possession, the same rule applies to petroleum in this school of thought. He stated that oil and gas being similar to wild animals as it wanders underneath the earth, it is not subject to ownership until it is captured and reduced into possession. This theory has faced countless criticisms in North America where it was first propounded. It is being discredited as it was submitted that there were no similarities between wild animals and oil and gas[884] minerals. This strong view is appropriated. Wild animals and hydrocarbons have no any similarities in

[881] *Texas v New Jersey supra.* The court held that since the States separately are without constitutional power to provide a rule to settle this interstate controversy, and since there is no applicable federal statute, it becomes our responsibility, in the exercise of our original jurisdiction.

[882] See generally Lawrence A. Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice*, (2nd ed, New Era Publishers, (2004).

[883] Atsegbua Ibid

[884] Ibid.

law or in fact. In non-ownership theory as seen in Oklahoma,[885] it states that petroleum cannot be owned since petroleum is gaseous.

Over 650 Million square kilometres of land belong to the US government and are subject to its direct control and management. This was as a result of the federal government's retention of rights in lands in west of the Mississippi following their acquisition and expansion.[886] The federal government and states can claim 'ownership rights or control and legislative competence over oil and gas resources found within their respective physical jurisdictions.'[887] The constitution of Nigeria speaks differently and disadvantageously to the Nigerian citizens and states on property rights as provided by the constitution ss.43&44(1) and LUA s 1. One can describe the approach taken by the US Constitution to be illustrative. Both enjoy concurrent interest against Nigeria exclusive theory.

In US, negotiation by thirteen (13) colonies united them in 1776 with federal principles which led to her declaration of independence from the British Crown.[888] As free sovereigns, they adopted the constitution when the Articles of Confederation under which their loose union was administered proved to be inadequate.[889] Though, the 1787 constitution did not confer express provisions on the issues of ownership of minerals resources in the US nor did the law explicitly assign the legislative duties or competence over such matters to the state or federal Congresses. The provisions of Article I, s.8, Clause 3,[890] makes federal system clear.

The federal legislative house was given extensive powers to legislate and regulate on interstate commerce, impose taxes. It validly makes federal laws to take precedence over laws of states where such conflicts with federal legislations. In relation to this, the 10th Amendment, Article IV, and Clause 2 of US provides: "Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people". In Nigeria, the two regions (South and North) were

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[885] Atsegbua Ibid

[886] As noted by Peter Mieszkowski, and Roland Soligo *supra*, p. 8, US government's control on vast legacy of land in some part states is due the federal government's retention of rights in lands in west of the Mississippi following their acquisition as the county expanded.

[887] Emphasis mine

[888] Hole Robert, *The American Declaration of Independence of July 4th, 1776*, Published in History Review 2001 http://www.historytoday.com/robert-hole/american-declaration-independence-july-4th-1776 Accessed 12/06/2014.

[889] See K. R. Thomas, *Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power,* CRS Report For Congress, The Congressional Research Service, Washington, (held in February 2008) at pg 4. http://www.fas.org/sgp/crs/misc/RL30315.pdf accessed 12/11/2013.

[890] US Constitution *supra.*

amalgamated in 1914. The constitution did not provide an exhaustive list of matters upon which the legislatures of the states or federal can operate. It assigns a wide spectrum of residual powers to them by means of the instrumentality of the 10th Amendment. The general power of the states to legislate is not solely predicated on the above constitutional provision but "an inherent attribute of the states' territorial sovereignty." The antecedents can be traced to the time of adoption and ratification as Thomas noted.[891] The unification was done for economic and political aims.[892]

This argument is subject to any valid constitutional impediment to the states' exercising her legislative sovereignty. For instance, if minerals though falling within the geographical territory of a particular state is located on land that belongs to the federal government. It is only where this is in place[893] that the federal legislation takes prominence over states in US. The supremacy of federal law operates to override state legislation with respect to that specific area. This is similar with the provision of the British Petroleum Act, s 1.[894] In US constitution, Article VI, Clause III puts the following clause in order to override the regional or states' conflicting provisions:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state...

The US Mineral Leasing Act requires monetary gains from leasing of public lands to be divided in three ways, except for Alaska. 50% gross revenues goes to states other than Alaska, 40% of gross revenues to Reclamation Fund, 10% of gross revenues to Federal Treasury and 90% of gross revenues to Alaska. Unless mineral rights are severed, whoever owns the fee of the soil owns everything below the surface, limited by the extent of the

[891] See K. R. Thomas above at p 4.

[892] Remarkably, the researcher sees the above unfastened proviso as one of the lacunas created under her legal regime to give discretions to states unlike Nigeria. This lacuna leads one to conclude that in so far as any mineral is found in the territory of a state within the union, it is for the legislature of the state to determine ownership and how those resources should be managed or regulated.

[893] Emphasis is of the researcher.

[894] Petroleum Act 1998 supra. S.1 states, "In this Part of this Act "petroleum" - (a) includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata; but (b) does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation". Exclusivity is not on other solid minerals.

surface rights.[895] This displays fiscal federalism. US regulations on oil and gas ownership differ significantly from laws in Nigeria or European countries. Oil and gas are often owned privately in the US as opposed to being owned by national government or Crown. It is the writer's opinion that these figures may not be politically agreed in Nigeria given the post-civil war phobia for secession by fiscally other powerful states and economy.[896] US federation was formed through process of negotiations and compromise not fusion or geographical spray. Ownership of mineral resources is decentralized accordingly. Remarkably, in the constitutions of the United States and Canada,[897] public ownership of oil and gas resources was not conceived as an issue to be assigned or centralized. In Nigeria, the federal government needs to be limited to broad issues affecting the nation at large whilst leaving issues like oil and gas ownership or control concurrently with regional or state and federal government as being practiced in the US.

Texas' minerals have been defined to include, oil and natural gas which has not been produced.[898] Such is not the case in Pennsylvania as recently confirmed by its Supreme Court.[899] The Court's ruling is sure to have a considerable impact on the exploration and production of all shale formations throughout the state. The Supreme Court decision was raised when a lower court suggested that an old decision of 1882 should be reversed. It held that this could not be applied to detach mineral rights from gas rights involving Marcellus Shale. In rejecting this view, the Court cited approvingly the 1882 *Dunham Rule.* It declared that natural gas was not a mineral, regardless of whether it was trapped in or what method used to explore it.[900] Complaints of mineral owner's excessive use of the surface can commonly give right to causes of action in trespass or nuisance. Texas courts have been historically unsympathetic to surface owners' complaints, absence of proof in negligence, breach of contract or breach of a statutory duty.

There are jurisprudences in many states embracing the accommodation doctrine which requires the mineral owner to accommodate an existing use of the surface estate. The decision in *Merriman v XTO Energy, Inc*[901] provides more recent instance of the

[895] *Del Monte Mining & Milling Co. v Last Chance Mining & Milling Co supra.* See Sally K. Fairfax, Carolyn E. Yale. 'Council of State Government. Federal Lands, a Guide to Planning, Management, and State Revenue(Island Press) (1987) P 60.

[896] Such as United States, Australia, Canada el cetera.

[897] As observed by the research.

[898] Ibid

[899] *Butler v Charles Powers Estate* A.3d, (2013) WL 1749828 (Pa. April 24, 2013)).

[900] See *Butler v Charles Powers Estate* above.

[901] *Merriman v XTO Energy, Inc* No. 10-09-00276-CV, 2011 WL 1901987 (Tex.App.-Waco May 11, 2011).

accommodation doctrine at work. A mere inconvenience to the surface owner will not suffice, as there must be a substantial impairment of the existing use. This entails that ownership and rights over ones oil or gas is not absolute per se whether government or private persons. It could be argued that the 'superiority or dominance' of the mineral estate owner ends when the interests of neighbouring landowners, government entities or other third parties are adversely affected by the operator's actions. US land and solid mineral resources are owned by private or provincial jurisdictions. The federal state formally owns only a few national parks and wilderness areas and reserves land for first Nations peoples. Provincial governments retain public lands and charge resources rents for harvesting or mineral rights related issues. It has been held in such instances that the federal law cannot take prominence over state laws.[902]

Prior to the Act, these mineral resources were subject to mining claims under the General Mining Act, 1872. The Supreme Court of US affirmed the president's constitutional power to withdraw public land from use in *United States v Midwest Oil Co.*, 236 U.S. 459 (1915). Following these events, Congress enacted the Mineral Leasing Act of 1920 which dictated a system of leasing and development for mining interests on federally owned lands. In US, royalties payments are made from one party to another based on usage of an asset. Often, it is in the form of percentage as chapter three discussed. However, the government exclusive rights in Nigeria have no limitation.[903] The US Government surrenders certain percentage of the proceeds to minerals mined from its lands to the states within which such lands are located. This devolution gives states' rights over mineral resources found in their land.

The nature of ownership of minerals in US as theories enumerated have shown that petroleum is capable of being owned.[904] This could be by private or states and no exclusivity. Examples could be seen in Canada provinces where private ownership of petroleum in *situ* still exists. Other areas have vested the ownership or property in

[902] See *Floyd A. Wallis, Petitioner v Pan American Petroleum Corporation* et al. 384 U.S. 63 (86 S. Ct. 1301, 16 L.Ed.2d 369). The Mineral Leasing Act of 1920 30 U.S.C. § 181 et seq. is a US federal law that authorizes and governs leasing of public lands for developing of coal, petroleum, natural gas and other hydrocarbons; phosphates, sodium, sulfur, and potassium in the US.

[903] M. P. Marchak, "Who Owns Natural Resources in the United States and Canada", (Working Paper No. 20), North America Series, Land Tenure Centre, University of Wisconsin, Madison, (October 1998), Pp 1 – 4. See also J. S. Lowe, *Oil and Gas Law in a Nutshell* (5th ed.), (2009) Pp 10 - 15. This system of devolution of powers gives various states in the US to make their mineral laws differently.

[904] Astegbua ibid. This theory has being reshaped and thus, re-enacted to streamline principle of fiscal federalism and it had allowed regional control of resources in many states as aforesaid to boast fulcrum of democratic allowances.

petroleum in the Crown[905] but with power being devolved as seen in Scotland UK as will be discussed shortly. This is an exception rather than the rule.

Convincingly, in US, an owner of real estate also owns the minerals underneath the surface, unless the minerals are severed under a previous deed or agreement.[906] Save mineral rights are severed, whoever owns the fee of the soil owns everything below the surface, limited by the extent of the surface rights and this applied to other mineral resources as noted in *Del Monte Mining & Milling Co. v Last Chance Mining & Milling Co supra.* This arrangement can serve the interest of central and state governments. This will resolves the legal squabbles over resources ownership in Nigeria if applied.

6.4 THE ENGLISH AND CANADIAN MODELS

S 2(1) Petroleum Act 1998[907] authorizes Her Majesty with the exclusive right of searching and boring for and getting petroleum to which this section applies. Subsection 2 notes that this applies to petroleum including petroleum in Crown land which for the time being exists in its natural condition in strata in Great Britain or beneath the territorial sea adjacent to the UK. Subsection 3 clarifies the above by acknowledging that for the purposes of subsection (2), Crown land is defined to mean "land which (a) belongs to Her Majesty or the Duchy of Cornwall; (b) belongs to a government department; or (c) is held in trust for Her Majesty for the purposes of a government department".[908] Devolution of power to oil

[905] With the exception of oil, gas, coal, gold and silver, the state does not own mineral rights in the UK. Generally minerals are held in private ownership, and information on mineral rights, where available, is held by the Land Registry together with details of land surface ownership. The UK Continental Shelf (UKCS) comprises those areas of the seabed and beneath the seabed, beyond territorial waters (12 mile limit), over which the UK exercises sovereign rights of exploration and exploitation of mineral resources this excludes hydrocarbons. Ownership of oil and gas within the land area of Great Britain was vested in the Crown by the Petroleum (Production) Act 1934. Note that the Continental Shelf Act 1964 applied the provisions of the 1934 Act to the UKCS outside territorial waters. For landward exploration a licence is required, which grants exclusive rights to exploit for and develop oil and gas onshore within Great Britain. The rights granted by landward licences do not include any rights of access unlike Nigeria, and the licensees must also obtain any consent under current legislation, including planning permissions. In Nigeria, acquisition is comprehensive. No consideration of such private owner's right. This seemed to be an oversight that law drafters have failed to reconsider. See *Mineral UK, Centre for sustainable mineral development* via https://www.bgs.ac.uk/mineralsuk/planning/legislation/mineralOwnership.html Accessed on 23/7/2014.

[906] *Del Monte Mining & Milling Co. v Last Chance Mining & Milling* Co.171 U.S. 55, 1898

[907] Rights to petroleum vested in Her Majesty.

[908] See Petroleum Act 1998 (c. 17) of the Great Britain. More so, this Act seemed to have manifested from the Petroleum Act 1871 and have over the years gone through numerous reviews and changes unlike the Nigeria Petroleum Act of 1969 which have since remain same till date. Note further that Subsection (1) above is subject to paragraph 4 of Schedule 3 and subsection (2) is subject to paragraph 5(3) of that Schedule.

regions is recognised beyond 13% derivation sharing formula[909] which has been the subject of controversies[910] in Nigeria. Nigeria Petroleum Act[911] provides for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and vests the ownership in the Federal Government.[912]

Canada is an oil producing nation with federal constitution though with monarchy dominion. Like Nigeria's 36 states and FCT, the country has ten provinces and three territories.[913] Canada runs federal monarchy, constitutional monarchy and parliamentary system. André Plourde[914] noted that geology, demographics and the constitutional provisions are two cardinal factors that determine the development of the oil and gas exploration in a country. The most important factor is the constitutional provisions. These lay out rights and control of natural resources including the geology and demography of a nation. Oil remains an important economic asset in any country. Canada produces over 43 Billion cubic feet of gas per day, also holding reserves of more than 61.95 trillion cubic feet of gas per day since 2007.[915] Yet, it gives the regional and provinces some control over these resources.[916]

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[909] See Nigeria 1999 Constitution as amended s 162.

[910] Littoral case supra.

[911] 1969 (No. 51) now Petroleum Act CAP. 350 L.F.N. 1990 Act CAP, P10 L.F.N. 2004 without review or amendment to the earlier provisions but only renaming of the Chapters.

[912] See ss 1 (1) and (2) supra. It however, weakly concludes thus, "this section applies to all land (including land covered by water) which (a) is in Nigeria; or (b) is under the territorial waters of Nigeria; or (c) forms part of the continental shelf". One can reason that the Act is not assertive and authoritative to in real sense of it vest the entire property in petroleum resources as provided above to the State. See also s 4 regarding the control and management of these vast resources.

[913] Note that Nigeria has three regions with six geographical Zones the South (with vast oil deposits), South East (with some quantity of oil in some states), South West (with quantity of oil in some states), North Central, North East and North West (the last three zones have no oil yet but have oil refinery in the North West).

[914] André Plourde, "Oil and Gas in the Canadian Federation", (Washington: World Bank Conference on Oil and Gas in Federal Systems, 2010) at pages 2 – 11. http://siteresources.worldbank.org/EXTOGMC/Resources/336929126644562 4608/Canada_Conference_Finaldraft_Feb10.pdf also, see Plourde, Andre, "Framework Paper: Oil and Gas in the Canadian Federation," World Bank, Online: http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1266445624608/Framework_Paper_Canada2.pdf accessed 2/5/2014.

[915] According to a report in the *Oil and Gas Journal* cited in an analysis brief prepared by the Energy Information Administration, Canada boasts of proven crude oil reserves of some 175.2 billion barrels behind only Saudi Arabia and Venezuela. As noted above, see Energy Information Administration, US Department of Energy, Independent Statistics and Analysis: Canada Country Analysis Brief, Energy Information Administration Online, at page 2, available from http://www.eia.gov/EMEU/cabs/Canada/pdf.pdf; accessed 10th June, 2014.

[916] The nation adopted her model of approach by the 'fathers of confederation' when the terms were negotiated in Constitutional Act of 1867. British North America Act 1867, 30 & 31 Victoria, C.3 (Statute of the United Kingdom) as has since been severally reviewed, repealed, amended and reiterated.

The distribution of public land between the federal government and the provinces in Canada is set forth in the BNA Act[917] and other pieces of legislations of different provinces. In Canada, oil and gas resources on public lands not been specifically reserved to the federal government are vested in the Crown. As the owner of the resources, the province has the same rights as other private property owners. This is subject to the same restrictions on private ownership imposed by common law or legislation. A province is empowered to make laws relating to 'the management and sale of the public lands belonging to the Province in Canada. It would appear that oil and gas resources are included within the scope of this action which was made exclusively in Nigeria. In Canada, the provincial government is free to choose methods of exploration and regulate production of Crown Petroleum.[918]

Legislation imposing royalties on oil and gas is within provincial authority as part of the management and sale of public lands. Comparatively, there is no similar law or practice in Nigeria. In Nigeria, federal legislators make laws in this respect, while state assembly is forbidden to make such laws.[919] Once title to property has passed from the province in Canada, this section no longer provides basis for legislative authority over the property. Management of public lands 'which includes the exploration of natural resources'[920] may continue to affect interprovincial arrangement.

S.50 of Canadian constitution[921] was earlier consolidated as s.92A (1) of the Constitution Act of 1867.[922] It sets out thus:

> Province legislature may exclusively make laws in relation to (a) exploration for non-renewable natural resources in the province; (b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom….[923]

[917] The British North America (BNA) Act, now called the Constitution Act 1867, is one of the basic documents of the Canadian constitutional development. It defines the rights to minerals and land thereof.

[918] Note that Alberta Personal Property Bill of Rights 1972 (ss 1 and 2) guarantee individual's right to private enjoyment of property and rights not to be deprived except with due process of law. Though, this applies within the province and may be overridden by federal legislation.

[919] See generally Second Schedule (Part 1) Item 1 to 68, particularly item 39

[920] This is because, it relates between one and another province and the authority of the federal authority. Once an article enters into the flow of interprovincial or extra provincial trade, the subject matter and all its attendant circumstances ceases to be a mere matter of local concern.

[921] Constitution Act of 1982

[922] See generally Constitution Act, 1982, and the Constitution Acts 1867 to 1975 (No. 2) and this Act may be cited together as the Constitution Acts, 1867 to 1982.

[923] In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in

This gives the regions legal grounds and sense of cohesion. The Constitution Act, 1867 s 109 provides*:*

> All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, 'shall belong to the several Provinces'[924] of Ontario, Quebec, Nova Scotia, and New Brunswick[925] in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

In parallel to the above, the Nigeria Constitution s.44 (3) concludes that the entire property in and control of all minerals, mineral oils and natural are vest in the federal government and shall be managed in such manner as may be prescribed by the National Assembly. The legislative power seen above is on mines and minerals, including oil fields, oil mining, geological surveys and natural gas. This was acknowledged by Second Schedule Legislative Powers Part I Exclusive Legislative List, Item 39 of the constitution and consideration for constitutional federalism was subjugated. The Canadian law provides that ownership and legislative control of specific portions of such resources is vested in either the federal authority or in the states by necessary implication. This was drawn from extra-constitutional arrangements or from the circumstances of the 'de facto' control of such resources. The key factor to determine where the federal government or a state authority lies is by ascertaining where the land situates. This is contrasting Nigeria experience as in *AG Federation v AG Abia State supra.*[926] It is reminiscent that mineral resource is hard to be separated from land.

It is confusing how land should be owned separate from its contents even with provision of Nigeria LUA. Nigeria's approach compared to Canada is legislatively poor on every conceivable metric. Nigeria has been grouped among the fifteen poorest nation of the

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the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada. Note, that the oil prices in Nigeria are mostly determined by independent marketers and private "black marketers" and filling stations even though the federal government may fix a price, this does not determine prices due to poor implementation.

[924] Emphasis supplied.

[925] This is a direct opposite of Nigeria s 44 (3) supra which unambiguously gave the federation all mineral resources including petroleum and empowering the federal legislature with exclusive power to legislate.

[926] See again Nigeria constitution s 44.

world[927] despite her enormous oil. This presents more reason for a change of face in the Nigeria present legal framework on natural resource issues. USA, Venezuela, Canada, Iraqi practice federal system. They created legal opportunities for private ownership of oil. There is need for a review of the decision[928] in *AG Federation v AG Abia State & 35 Ors*. In Alberta province in Canada, private ownership of petroleum in *situ* constitutes 10% of mineral in area of Brunswick. Though, ownership of petroleum is fully vested on a crown[929] because of sovereign coastal principle. This is obtainable in Britain and Saudi Arabia. But other mineral resources are vested on the Mines Industry[930] in UK. Nigeria model seems not to be symbolic in a way something works to be useful or dormant.[931]

The 1974 Federal Provincial Energy Conference Convention in Canada authorised the enactment of flurry federal and provincial legislations on energy resources. Key provisions of the Canadian Constitution Act, 1867 (ss 108, 109, and 117) allow provincial legislatures and the federal parliament to share jurisdictions over Crown property. Public work resides with federal while natural resources are within the legislative power of provinces. Title to such property is not vested in one jurisdiction since the Canadian Crown is indivisible.[932] S.109 broadens the meaning authorising change of central control of oil resources.[933] The Canadian Prime Minister had remarked that, "while the federal government recognizes the legitimate interests of provincial governments and private companies, the government is

[927] See Xavier-Sala-i-Martin and Arvind Subramania, "Addressing the Natural Resource Curse: An Illustration from Nigeria", Journal of African Economies, Centre for the Study of African Economies (CSAE), vol. 22(4), (2003) pp 570-615. It's stated to be 7th largest producer in the world and 1st in Africa. Nigeria also supplies a fifth of the USA oil imports and ranked high in the supply of the global Liquefied Natural Gas (LNG) and African most strategic in oil issues. See Augustine Ikelegbe, "The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria", Nordic Journal of African Studies 14(2): (2005) pp 208–234. In Purchasing Power Parity (PPP) terms, the central control of Nigeria mineral resources had not impacted much on her citizens. The nation's 'per capita GDP' was US$1,113 in 1970 and had remained at US$1,084 by 2012. This has not had any reasonable change till date especially with her crude oil price woes and oil economy downturn.

[928] This is the threshold concept which has been defined and expounded in judicial authorities and it through which courts determine their decisions in matters before them. The approach seen in Canada and USA as enumerated above is recommended for Nigeria to settle her endless contended legal issues.

[929]See J.B. Ballen *Oil and Gas lease in Canada*, Toronto University of Toronto Press (1985) Pp. 8-11.

[930] With the later passing of the Coal Industry Act 1994, the 16th and last Coal Industry Act, its industry-wide administrative functions in British Coal were transferred to a new authority - the Coal Authority and all economic assets were privatized thereof.

[931] See Lawrence A. Atsegbua, "Resource Control: *Attorney General of Federation v Attorney General of Abia State*", International Energy Law and Taxation Review, (published by Sweet & Maxwell, London) Issue 10, (2002) pp 261 – 263; Onyekachi Duru, 'An Appraisal of the Legal Framework for the Regulation of Nigerian Oil and Gas Industry, with Appropriate Recommendations' (August 2, 2011). http://dx.doi.org/10.2139/ssrn.2137979 visited 19/7/2014. See *AG Fed v AG Abia State and 35 Ors.*

[932] Laura *Bowman, "Constitutional "Property" and Reserve Creation: Seybold Revisited," Manitoba Law Journal, **32** (1): (*September 2013) Pp *1–25.*

[933] For a chart depicting the legislation enacted during this period as noted by Harrison, "Natural Resources and the Constitution: Some Recent Developments and their Implications for the Future Regulation of Resource Industries", 18 ALTA L. REV. 1**,** (1980) p 4.

determined to safeguard the interests of the consumers of Canada".[934] This returns to the states portion of the power that had been taken away from them by the *Phillips decision*."[935] His National Energy Plan called for legislation to do away with the "artificial distinction between interstate and intrastate markets".[936]

UK and Canada devolve more powers to regional units as witnessed in Alberta provinces and Scotland in UK. Where it conceived such federal government exclusive and unqualified ownership with legislative control of such assets in exclusion of sub-regions, Pourde[937] argued that the federal government's limited constitutional role can become an obstacle in addressing national challenges or meeting international obligations in actively setting oil and gas policy. He concluded:

> In a sense, the disengagement of the federal government from oil and gas policy and the prominent role of the provinces in environment policy arguably make it difficult for Canada to address the challenges posed by climate change.... To the extent that national energy policy is articulated around provincial policies. How can the federal government design a climate policy for all of Canada without calling into question aspects of provincial energy and environmental policies, especially in the oil and gas producing provinces?

The author asked how any national government in a federal democracy could fully and effectively discharge its economic and environmental responsibilities to all the provinces. Or how can it successfully carryout international obligations when it lacks the full range of ownership rights and the legislative competence to deal with such resources freely without recourse to the provinces and sub-national units. He said that such may be a handicap in the globalised world of the 21st century. But, the researcher disagrees with this opinion and strongly notes that, the role of federal government should be supervisory and the law

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[934] See opening statement by the Prime Minister of Canada at the First Ministers' Conference on Energy in Ottawa, on Jan. 22, 1974, Conf. Doc. No. Fp - 4127, as quoted in Harrison, at p 4. See also Naggy G. E. ibid.

[935] Richard, "Appeal from *Jarndyce v Jarndyce*: The State Role under the Natural Gas Policy Act of 1978", 41 LA**.** L. REv. 147, 152 (1980) el tal, Naggy G. E. ibid at pp 246 and 247.

[936] See the *National Energy Plan, Executive Office of the President, Energy Policy and Planning* (1977) p 52. Indeed, under the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301- 3432 (NGPA) federal price controls were extended to the intrastate market. See generally, Comment, *For Gas Congress Spells Relief N-C-P-A: An Analysis of the Natural Gas Policy Act of* 1978, 40 U. PITT. L. REV. (1979), p 429. All these indicated the previous control of federal government over the regions. The above have since changed and the regional government can now take part in the decision, control and management of oil and gas businesses in Canada and in the US too. However, Nigeria federal authority supersedes every other power in this respect prior and after her independence. See again s 44 (3) of her 1999 constitution as amended.

[937] See André Plourde, 'Oil and Gas in the Canadian Federation', (Washington: World Bank Conference on Oil and Gas in Federal Systems, 2010) at page 23. http://siteresources.worldbank.org/EXTOGMC/Resources/336929126644562460 8/Canada_Conference_Finaldraft_Feb10.pdf Accessed on 22/6/2014.

should define this in accordance with the federal legislative theory. It needs to specify the limitation to ownership and control of land or minerals with the revenue allocation. This will enhance the federal government with its responsibilities and duties at the international level. It can give the role of mineral resources control within the state and nation building. The writer wishes to ask if countries without oil and gas are not meeting up with their national or global responsibilities. USA and Canada who embedded decentralized theories operate without scuffles as seen among the federal controlled theorists. Pourde's view with due respect is a mere political phrase that is narrow-minded because federation consists of regions and powers should also be regionalised.

The Canadian provinces exercise exclusive legislative authority over all matters that are merely local or private in nature in the Province including Property matters in each of the Province. Provinces do not rely on federal for their administration or development. Legislation regulating the exploration of private oil and gas in these provinces like land is within the scope of these clauses contrary to Parliamentary Declaration. Thus, it is wise to ask if the Nigerian Supreme Court decision in *AG Federation v AG Abia State & 35 Ors* came within this purview.[938] Canadian provinces own up to a 10 percent interest in all subsequent offshore projects and Crown Corporation with other local conglomerates having 5% interest in the White Rose Expansion.[939]

Second Schedule (Part 1),[940] gives Nigeria National Assembly legislative powers on natural resources to the exclusion of states or local authorities. Resource control largely deals with the need to exercise or regain ownership, control, use and managing the natural resources by the original settlers. It is primarily for the benefits of the immediate

[938] In Canada, a region may fix prices of gas consumed and produced in its area thereby exercising regional constitutional power over its resources 'in extenso'. Such example is provided by s 92(10) which grants the provinces exclusive legislative authority over local works and undertakings except those enumerated in subsections (a), (b) and (c), that may be subject to federal legislation under Parliament's declaratory power. Such example is seen in interprovincial pipelines arrangements that are connected with other provinces, or extending beyond the limits of the province. They are consequently subject to federal jurisdiction and this is where the federal authority meaningfully supersedes provincial legislation.This is understandable as it connects between one province to another within and outside the Canada.

[939] Alexander MacDonald, 'Q.C State Ownership in the Canadian Offshore' http://theogm.com/2013/04/05/state-ownership-in-the-canadian-offshore/ accessed on 5/6/2014. In 2007, Newfoundland and Labrador (NL) adopted an Energy Plan to guide and define a provincial vision for energy resource development. As a result, Crown Corporation, Nalcor Energ and, the province now own a 4.9 percent interest in Hebron, and a ten percent interest in Hibernia South.

[940] Ibid

communities and the people on whose land resources originate.[941] In extension, it is for purpose of good governance and development of the country as witnessed in Canada.

6.5 OTHER COUNTRIES AND REGIONAL MODELS

The view of the developed system was to have a uniformed and strong approach to oil management through legislations.[942] Some of the nations without domestic supplies of oil have had their attention focused upon methods of ensuring a steady flow of imported mineral oils. Countries with vast domestic supplies[943] have been faced with different problems[944] of determining how best to manage the exploration and supplies. Concerns have been whether control of oil and gas should be regionalised or nationalised. Nigerian's oil-rich region has been advocating for an increase in the regional authorities[945] and a decrease in federal power.[946] This experience has been witnessed in the western province of Canada[947] and Russia.[948] Turkmenistan and Uzbekistan produced well over 50 Bcm of

[941] Douglas Oronto et al., "Alienation and Militancy in the Niger Delta: A Response to CSIS on Petroleum, Politics and Democracy in Nigeria," (Silver City, NM & Washington, DC: Foreign Policy in Focus, July 2003), p. 7.

[942] Archie Fallon and Ji Nin Loh, *Oil and gas regulation in the United States: overview* (A Q&A guide to oil and gas regulation in the United States. http://uk.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1247980513548&ssbinary=true accessed 22/01/2016. See also David W. Miller, *The Historical Development of the Oil and Gas Laws of the United States,* California Law Review Vol 51 Issue 3 Article (August 1963), accessed 15/2/2016 via http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3039&context=californialawreview.

[943] Countries like Nigeria, Iraq, Venezuela, Angola, Ghana with America, Canada el cetera. Though, the problems are more compounded with the developing nations with federated units particularly Nigeria, Iraq where there is a high level of militancy and contest or quest for individual or regional control these vast resources.

[944] Such as Nigeria, Iraq, Venezuela etc unlike UK, Canada and Britain. See Gretchen E. Nagy, "Sagebrush and Snowshoes: The Struggle for Natural Resource Control in the United States and Canada Law and Contemporary Problems" (1981) Page 246 – 263, particularly in pp 246 - 247.

[945] See Nigeria 1999 constitution s 162 (2) supra on Revenue Allocation

[946] See *AG Federation v Abia State & 35 Ors supra*

[947] See the Newsweek, (September 22, 1980), at 42; N.Y. Times, (January 11, 1981), § **1,** at 8. It is not arguable that the Nigeria Niger Delta has taken this toll like separatist sentiment that cropped up among Albertans, other western Canadians in past years and Scotland in the present day Britain-UK. See again, Ralph Hedlin Assoc., "Western Canada in Confederation", II D.M.T. Monthly Newsletter, Report 6, (1981) at pp 5-9.

[948] Jonathan Stern, 'Natural Gas in Europe − The Importance of Russia', ibid; Chi-Kong Chyong & Louisa Slavkova & Vessela Tcherneva ibid. The opportunity for a much closer natural gas partnership between Russia and Europe is based on firm foundations. The Russia control her rights on the gas even though, there had been some bottlenecks. Part of the aim of the Energy Union is to diversify the EU's gas supplies away from Russia, which has proved an unreliable partner. Identical and significant gas reserves have also been established in the countries of central Asia and the Caspian region.

gas in 2003. Kazakhstan and Azerbaijan have rapidly developed gas industries based on gas production associated with petroleum and solid minerals[949] to meet their demands.

Iraqis 2005 Constitution has federal principles.[950] Upon its adoption by referendum of October 15th, 2005,[951] the country became one of the newest federal democracies in the comity of oil nations despite constant unrest. Article 1 of the constitution states; "The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq".[952] Among other emerging legal systems, the institutions that define their constitutional states may be described as nascent and still in their formative ages. Iraqi constitution was vague on the issue of oil ownership, control and revenue sharing formula. But, it grants the national government with exclusive power over the management and control of her petroleum resources in cooperation with the regions and governorates. It affords the latter an equitable share of the national revenues 'sufficient' to their resources, needs and the percentage of their population.[953] There is no similar regional control or participation whatsoever in Nigeria. The quest for total regional control is not yet over in Iraq.[954]

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[949] Jonathan Stern, 'Natural Gas in Europe – The Importance of Russia', Oxford Institute for Energy Studies, http://www.centrex.at/en/files/study_stern_e.pdf. Accessed on 20/10/2015.

[950] Constitution of Republic of Iraq 2005. See s.44 (3) and Item 39 of the Schedule of Nigeria constitution *supra*

[951] See the web page http://www.npr.org/documents/2005/aug/constitution_ap_8-29.pdf accessed on 12/06/2014.

[952] See Constitution of Iraq, 2005, United Nations Assistance Mission for Iraq, via http://www.uniraq.org/documents/iraqi_constitution.pdf accessed on 12/06/2014.

[953] See Constitution of Iraq, Article 121(3). See also McGee Ronan, Oil Legislation in Iraq: A Step towards Stability November 19, 2009 via http://www.stimson.org/spotlight/oil-legislation-in-iraq-a-step-towards-stability/ accessed on 11/06/2014.

[954] According to the *Energy Information Administration (EIA)*, "Iraq was the world's 12th largest oil producer in 2009. Presently, Iraq has the fifth largest proven crude oil reserves in the world, and it passed Iran as the second largest producer of crude oil in OPEC at the end of 2012. Iraq was the world's eighth largest producer of total petroleum liquids in 2012, and has the world's fourth largest proven petroleum reserves after Saudi Arabia, Canada, and Iran." Although, Iraq has been engulfed with political crisis and social unrest, it may not have exact record of her oil production net in recent time. Oil is pivotal to the long-term stability and prosperity of Iraq with estimation of 115 billion barrels is the world's third largest proven oil reserves, and Iraq hopes to raise its present output of 2.5 million barrels per day to 6 million barrels per day. This intends to accelerate her foreign oil relationship especially with ones to develop its oilfields. The revenue thereof is largely responsible for financing Iraq's reconstruction, and will continue to facilitate the country's emergence as a major regional power though; it has serious challenges of proliferations of insurgency at hand to contend. See generally, Energy Information Administration, US Department of Energy, *Independent Statistics and Analysis: Iraq Country Analysis Brief*, (Sept.2010) Energy Information Administration,
<http://www.eia.gov/countries/cab.cfm?fips=IZ, accessed on 11/06/06/2014.

The researcher reviews some relevant provisions on the Iraqi's 2005 constitution. Under Article 111, "oil and gas are owned by all the people of Iraq in all the regions and governorates". Confirming this, Article 112[955] provides:

> First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population... in different areas of the country, and this shall be regulated by a law.
> Secondly: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people'...[956]

Careful perusal clarifies that Iraqi constitution does not vest exclusive ownership in the federal government, in the regions or governorates. Rather, it rendered exclusive control and ownership on the people of Iraq.[957] This is simply, devolution of power strategy. Can Nigeria constitution and its sister legislations deduce any lesson here.[958] As noted previously, the rising agitation in Nigeria similar to Iraqi coincided with the activities of the Movement for Survival of the Ogoni People (MOSOP).[959] They campaign for greater control of oil resources, infrastructural development, environmental revival, and economic autonomy over their region.[960] Though, the Iraqi law did not specifies method of oil

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[955] Constitution of Iraq, 2005, United Nations Assistance Mission for Iraq, <http://www.uniraq.org/documents/iraqi_constitution.pdf> 11/06/2014.

[956] Emphasis supplied.

[957] Though, one can argue that the Iraqi's constitution is lacking coherent guidelines however, it gives the regional government power to partake in the control of the petroleum resources management. Baghdad agreed in May 2009 to allow the KRG to export oil from the Kurdish region's Taq Taq and Tawke fields using the state-controlled pipeline running from northern Iraq to Turkey, but insisted that it would be the KRG's responsibility to pay the companies involved, as all but 4 of the 25 PSCs were not federally approved. See McGee Ronan above.

[958] Richard Boele, Heike Fabig and David Wheeler; "Shell, Nigeria and the Ogoni, a study in Unsustainable Development: The story of Shell, Nigeria and the Ogoni people – Environment, Economy, Relationships: Conflict and Prospects for Resolution", Sustainable Development Volume 9, Issue 2 (May 2001) Pp 74–86. See also Jeff Haynes "Power, politics and environmental movements in the Third World Special Issue: Environmental Movements Local, National and Global"; Environmental Politics, Volume 8, Issue 1, (1999) Pp 222-242. Negative impacts of this theory on environment and communities with oil have been felt. This includes environmental degradation and executions of Ogoni leaders in 1995 by then the military central government. This action has attracted sombre international condemnations.

[959] SPDC has argued after been alleged for an accomplice of not responsible or taking part in the tragic events unfolded in the Niger Delta during and after military junta.

[960] MOSOP which saw Mr. Ken Saro-Wiwa as its president in 1993 - also alleged that the oil industry was causing 'environmental devastation' coupled with their contest for oil control. SPDC company in Nigeria started operations in Ogoni land in 1958 and withdrew in 1993 because of violence and actions targeting facilities of government and the company due to quest for local control of oil and gas in the region. At the time, oil production from Ogoni land – some 28,000 barrels a day (b/d) - accounted for a small proportion of SPDC's total production in Nigeria of around 1 million b/d. It remains the largest oil business in Nigeria, owning some 90 oil fields across the country. The Ogoni people began non-violent agitation against Shell in the early 1990s under the leadership of Ken Saro-Wiwa and his MOSSOP Movement for the Survival of the

control, but it has been noted that, "the drafters could have been clearer in definitively setting out whether either can act alone or whether either must seek the consent of the other in the formulation of laws or policies on oil issues". [961] The researcher finds this deliberate as means of protecting citizens from the central radical control.

The interpretation is that Iraqis constitution has conferred on her people through their local, regional and federal authoritative rights to own, manage and control their oil resources. This means that it has created a true federalism and division of labour among tiers of government. One can infer that the constitution frowns at total central ownership. It follows that the language recognizes by this law is paramount to the nation's oil and gas resources and development of its laws.[962] Other provisions of the constitution suggest sense of equality in a nation populated by diverse ethnic and sectarian groups like Nigeria. The language endorses the opportunity of all to share in the benefits of Iraq's oil resources equitable bases'. With legal diversity and decentralization of oil control, Nigeria can join these leagues.

Venezuela is another democratic federal republic with oil resources. It had her first federal constitution in 1811.[963] The country supports federal political system. Although, there have been arguments if what Venezuela operated in recent time is really, a fiscal federalism.[964] Despite these opinions, one can still argue that Venezuela did practiced federalism but with a strong centralistic theme and weak regions.[965] Venezuela is one of the world richest oil

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Ogoni People. MOSOP complained that the oil giant was responsible for devastating the ecosystem of the Niger Delta among other things.

[961] Rex J. Zedalis, *The Legal Dimensions Of Oil And Gas In Iraq, Current Reality And Future Prospects*, Cambridge, Cambridge University Press, (2009) at p 35.

[962] See generally See Articles 111 and 112 respectively. See Rex J. Zedalis, ibid at p 35. Note, it will boast the legal and economic strength of Nigeria. High investment of oil and gas in the US suggests that oil ownership was made to be owned by both government and private persons as private property. This is pertinent as the present law does not create an ambiance for productive investment for Nigeria.

[963] *The World Bank, Country Data: Venezuela,* the World Bank Group, Washington DC, http://data.worldbank.org/country/venezuela-rb accessed 12/6/2014.

[964] Between 1999 and 2013 the legislative and judicial branches of the Venezuelan government were subordinated to his authoritarian rule within this period as he stacked his government with military officers, emulating the juntas that rule under authoritarianism regime which defeated the philosophy of true federalism and democratic principles. See National Nigeria Petroleum Corporation (NNPC) Act (No 33 of 1977) Now Cap 320 LFN 1990. See ss 5 and 6 which provide the duties and functions of the Corporation.

[965] Osmel Manzano, Francisco Monaldi, Jose, Manuel Puente, Stefania Vitale, 'Oil Fuelled Centralization: The Case of Venezuela', (Washington: World Bank Conference on Oil and Gas in Federal Systems, 2010) at p 7, via http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1266445624608/Venezuela_Conference_Finaldraft_Feb10.pdf accessed on 1/6/2014. See also Allan R. Brewer-Carías, 'Centralized federalism in Venezuela' http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b8ab241efb849fea8/Content/II,%204,%20481.%20Brewerv%5B1%5D.1Centralized%20federalism%20Venezuela%20_05-05_.pdf. Accessed on 1/6/2014.

nations but socially unequal countries. Like Nigeria, it has large number of citizens living poor.[966] Oil and gas production is the most significant activity in its national economy and the highest source of government revenue at all levels.[967] In Venezuela, oil and gas industry accounts for over 80% of her exports. Also, about 40% to 60% of government income constitutes substantial 20% of the gross domestic product.[968] Oil production is concentrated in the three states of Anzoátegui, Monagas and Zulia with the latter two accounting for 85% of total production. The former 11% was produced by the five other states.[969]

Notwithstanding the centralistic approach, Manzano has noted that the usual fiscal tensions between oil producing regions and central government is due to lack of historical federal system status[970] and its impact is been felt. The three main oil producing states have not been the leading beneficiaries of the national geological fortune situation like Nigeria.[971] Oil and gas incentives, royalties and income tax are paid to the federal treasury only and the states or municipalities have neither control nor impact in the matter. They are not also entitled to special compensation for oil produced in their territories.[972]

Like Nigeria Petroleum Act,[973] Venezuela Petroleum Law of 1920 vested property rights firmly in the national government and her 1961 constitution.[974] When compared, Nigeria laws are appears controversial on this respect.[975] The Venezuela 1961 Constitution Article

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[966] Neal R David., 'Democracy in Hugo Chavez's Venezuela: Developing or Faltering Due to His Politics, Activities, and Rhetoric?' Programme Research Project, USAWC Class of 2008, www.dti.mil accessed on 18/06/2014.

[967] Ibid at pp 1 and 2.

[968] According to statistics, Venezuela is an upper middle income with gross domestic product of $326 billion according to *the World Bank, Country Data: Venezuela,* The World Bank Group Washington DC, http://data.worldbank.org/country/venezuela-rb, accessed on 20/5/2014. The Nigeria oil region suffers from environmental challenges and compulsory land acquisition thus living in solitude. See the World Bank Statistics supra.

[969] Ibid

[970] Ibid

[971] The population, political consciousness, ethnical differences and international impacts has changed the sights of the regions where Nigeria oil is been explored.

[972] This practice is opposed by federal democratic principle and Margna Carta Rule of Law. See Chapter 2 and s 20 in course of invoking s 16 which authorizes government to harness the national mineral resources for economic benefits. But, s 6 (6) (c) became a thorn on flesh of any citizen who dare to exercise or enforce his/her his environmental rights as noted by s 20.

[973] S 1 supra.

[974] Manzano et al., at p 9. See Peter Mieszkowski, and Roland Soligo, op cit at p 3. See Article 126 that further underscores the legislative monopoly. Article 136 of the 1961 Constitution of Venezuela vests the national government with the power to make laws with respect to; *"…collection and control of taxes, income, capital …importation, …and stamp duty …the mining and oil and other taxes, fees and income not allocated to States and municipalities, as a matter of national contributions to create law".*

[975] The provision of s 1 of the Land Use Act and s 44 (3) supra of the constitution still conflicts on ownership of land.

102 states: "The lands acquired for the exploration or exploitation of mining, including oil and other mineral fuels, it will be in full ownership to the nation, without compensation to terminate for any reason, the respective concession". Article 12 provides that: "The mineral and hydrocarbon deposits, whatever their nature, existing in the country, under the bed of the territorial sea, exclusive economic zone and continental shelf belong to the Republic and public property therefore inalienable and indefeasible. The coastal seas are public property".[976]

Considering Venezuela and Nigeria legal systems, the two-third of Venezuela's natural gas resources are associated with oil fields. Just fewer than 20% of known gas reserves are non-associated while around 10% is salt dome gas. In Nigeria, gases amounted to over 40% of the production are been flared due to insufficient infrastructure and legislative deceleration. This should have been utilized for more economic consumption. EIA reported that natural gas processing plants, which can process over 773 billion cubic feet per year, sit mostly idle.[977]

In Australia, all laws vesting mineral and land are derived from state and territory legislations.[978] Both state and territories of the nation are entitled to constitutionally make laws on land and mineral resources found within their various domains.[979] This is in vagrancy with Nigeria law on mineral resources. It appears that Nigeria is adopting Latin America model where law on surface property rights is far from uniformed and simple. All their Civil Codes adopted the Roman maxim of "cujus est solum eius est usque ad coelum et ad inferos"[980] and in principle, recognizing landownership to include subsoil.[981] Most of these codes[982] expressly exclude petroleum and other minerals from land rights and reserve same to the national domain power.

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[976] To further guarantee the authority of the central government over all matters connected to oil resources, the Constitution emphatically provides in Article 302 for more control by the State.

[977] One can ask 'who owns this Green House Gas being emitted and where it is converted for economic use.'

[978] S.51 (xxxi) of the Australia constitution. See Samantha Hepburn op cit p 12

[979] They are not required to provide compensation to deprived land owners. This is called "the non-application of the Commonwealth just terms provisions" See Simon Evans, "When is an Acquisition of Propterty not an Acquisition of Property", Public Law Reviews II (2001) pp 183 at 186.

[980] "The rights of the surface owner extend upwards to the heavens and downward toward the centre of the earth" See LawTeacher, UK. Property Law 1 Land Law Essays (November 2013). Accessed 13/06/2016 via http://www.lawteacher.net/free-law-essays/land-law/property-law-1-land-law-law-essays.php?cref=1

[981] See Civil Code of Brazil Article 1.229; Civil Code of El Salvador Article 569; Civil Code of Venezuela Article 549; Civil Code of Argentina Article 2518; Civil Code of Nicaragua Article 618 etc.

[982] Aldrian J. Bradbrook. *The Law of Energy Underground: Understanding New Developments in Subsurface, Production, Transmission and Storage.* Oxford University Press (2014) p. 69

6.6 INTERNATIONAL LAWS OF COMPENSATION AND ENVIRONMENTAL SUSTAINABILITY

Oil activities have environmental challenges. It attracts damages and compensations at local and international levels. Compensation is referred to as making good or reducing damaging effects, injuries and loss suffered from one's act or commission. There are legal debates on it and community outburst as a result of poor laws, policies and enforcement. These affect government and other stakeholders' efforts to curbing the incessant menaces of oil operation on human environment. Nigeria Oil Pipeline Act 1956 did not provide comprehensive measures for oil pollution compensation. S 6 (3) provides: "Payment of compensation to owners or occupiers of property for damage done by the holder of a permit to survey any land for pipeline purpose and for any injurious act on land by oil pipeline or license holder". S 11(5) states: "Damages arising from breakage or leakage of oil pipelines; with the proviso that where the parties do not reach agreement, the matter should be settled by court.

The basis of these compensations which should be fair and adequate[983] was not captured by this law. This makes compliance discretionary or optional than compulsory. The Factory's Act for instance clearly stipulates the criteria that are to be met by a desiring organization. Often, the standards are not met as the company may have license duly issued by the regulatory body to operate. The license presupposes that all the conditions have been met and all needed equipment, facilities and conditions provided and complied. This is perhaps the biggest problem in occupational health and safety violations in Nigeria especially as solid mineral activities involve hazardous chemicals and work. Nigeria laws did not provide for such issues or such being conceived by any other environmental laws with regards to mineral utilization. The only existing law directly affecting health and safety of workers in all sectors is the Labour Act LFN 2003.[984]

In the past, the rights of nations, corporations, or individuals to own nature and to pollute nature have been slightly delimited by international treaties - Law of the Sea (1982), the Montreal Protocol on Substances that Deplete the Ozone Layer (1990), the Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and their Disposal (1989), and the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973 and 1979). There are a number of bi-lateral and multi-lateral agreements between nations, establishing conditions to reduce their mutual

[983] See G. Ekitkerentse. *Nigeria Petroleum Law, Macmillan Publishers* (1985).

[984] See particularly ss.118-121 of the Labour Act 2003 under International Labour Organization.

understanding particularly on natural environments like Paris Agreement noted. This is found in the North American Free Trade Agreement (NAFTA) 1994 which was deeply flawed though it is an example of such contracts. CFRN s.20 is limited by non-justiciable clause under s 6(6)(c) of the same law.[985] Nigeria should domesticate these treaties and fully enforced them to cub daily greenhouse flared in Nigeria.

FIGURE 17: EFFECTS OF OIL SPILLS IN NIGER DELTA

SOURCE:[986] http://allafrica.com/view/photoessay/post/post/id/201311070001.html#7. Accessed on 25/10/2016.

Every country has criminal law prohibiting bribery or corruption especially in the public circles. People bribe to flare gas or pollute and get away without been prosecuted.[987] This lack of transparency militates against the efforts to cub environmental decay of oil pollution. National laws prohibiting foreign bribery were relatively rare in this regards. The US Foreign Corrupt Practices Act (FCPA) 1977 stood for almost 20 years as the only transcontinental bribery statute in the world. Unfortunately, it focuses only on the 'supply'[988] of the bribery equation, and leaving behind 'demanding side' and lower-level

[985] Chapter II of the Nigeria constitution which deals with these matter cannot be fully enforced with the existence of the said s 6(6)(c). This needs total amendment to enable the court adjudicate the provision of chapter II and enforce environmental rights in Nigeria.

[986] Bodo Creek in May 2011. The oil pollution is visible in the water on the mangroves, and in the soil of the region. There is need for proactive action with legal framework to clean it.

[987] Peel, Michael, and Chatham House. "Crisis in the Niger Delta: how failures of transparency and accountability are destroying the region." (2005) and P. O. Oviasuyi, and Jim Uwadiae. "The dilemma of Niger-Delta region as oil producing states of Nigeria." *Journal of Peace, Conflict and Development* 16.1 (2010): pp 10-126.

[988] Lucinda A. Low, Thomas K. Sprange, and Milos Barutciski, "Global anti-corruption standard and enforcement: Implications for energy companies". Journal of World Energy Law & Business, Vol. 3, No. 2 (2010)

of corruption[989] which affects its total enforcement on oil sector. The development needs to be adopted as international treaty and enforced globally.

In Nigeria, oil and environmental pollution compensation cases are enforced by Ministry of Petroleum and Natural Resources and the Judicial Arm under OPA s.11(5). The ministry formulates guidelines on the issue. It considers it, treats and disposes it off. Also, compensation claims are made to the tentative allowable limits of waste discharges.[990] In case of spills, the immediate occupiers bear the brunt while the NNPC Inspectorate Division determines area of priority and outline clean-up measures that defaulter should comply. This is insufficient as there is no legislative correlation linked to it and the inspectorate can easily be influenced by external forces national and international. As the victims of oil spills are kept in the dark because of financial rewards, environmental legislation became imperative. FEPA was given a general functions on it. S 4 of the Decree (now Act) provides that FEPA has general powers of environmental protection and development. It empowers the Agency to carry out necessary activities that are expedient for full discharge of its functions. The poignancy implementation and uneven enforcement is still quite in Nigeria. Where there is energetic democratic principle, implementation is rapid. Countries like Britain, the US[991] and Canada have positive enforcement and compliance of environmental related legislations. UK has recently gone from being an enforcement laggard to aggressive regulator and enforcer.[992]

As conversed earlier, the Nigeria compensation of oil pollution is enforced by the court where agreement is not reached by parties. This is usually instituted under law of tort.[993] Absence of classification of what constitutes fair or adequate compensation for this breach

[989] These treaties create a legal infrastructure to facilitate cross-border investigations and enforcement. International financial institutions such as the World Bank, which previously turned a blind eye to corruption in projects they financed, are now investigating and sanctioning firms and their personnel found to have engaged in improper practices. As exemplified by the *Siemens* case, multijurisdictional investigations are on the rise, as are the penalties for violations, particularly where so-called 'grand' corruption is concerned.

[990] Jehwo Ibid p 59

[991] Implementation of the Foreign Affairs Corrupt Practices Act (FCPA) in the United State of America is at an all-time high and it discourages corruption and bribery found in multinational oil industry.

[992] . Note, UK did this to curb every threatening activity on the global environment conceivable stratum though environmental issue is struggling with the US new regime. Drimmer has noted that environment is critical common element in respect for human rights. When that right is breached, the results may be stark. J. C. Drimmer and S. R. Lamoree, "Think Globally, Sue Locally: Trends and Out-of-Court Tactics in Transitional Tort Actions", Berkeley Journal of International Law Volume 29 Issue 2 Article 2. (2011). Previous literature in Nigeria had focused on political issues on nature of compensation and ownership land and minerals. This has made the management of mineral and environment a herculean task under the Nigeria present legal system.

[993] Negligence, nuisance and the rule in *Ryland v Fletcher* (1866) LRI Ex 265.

has left victims violent and controversial. It opens floodgate of disputes between local communities, states and oil companies. It is not known if the rate companies determine compensation is a scale drawn up by the Oil Producers Trade Section - the OPTS.[994] This is not product of negotiation in the agreement with the people affected by polluting operation. The rate appears to be very low and do not reflect the increasing inflation rate in the country.[995] Nigeria courts have held sway in *Amos v Shell BP Nigeria Ltd.*[996] Petroleum (Drilling and Production) Regulation, 1969 tried to address these controversies. Regulation 17 (c) empowers oil company to enter upon and occupy private land but laid conditions: "(i) notice in writing to the Minister (a) Specifying the name or other sufficient designation, of the land, (b) the size of the land, and (c) the purpose for which it is required and (ii) payment or tender of payment, to persons in lawful occupation of the land or to the owners of the land, of fair and adequate compensation".

Oil pollution has often been treated as customary international matter. In *Kiobel,*[997] Nigerian plaintiffs filed *Kiobel* in 2002, alleging that Royal Dutch Petroleum Company and Shell Transport and Trading Company, through a subsidiary, collaborated with the Nigerian government. They accused them of committing human rights violations by suppressing lawful protests against oil exploitation and environmental pollution in the Ogoni region of Niger Delta. In 2006, the district court held and granted in part while denying in part the defendants' motion to dismiss the suit. The district court granted the motion to dismiss for the claims of aiding and abetting extrajudicial killing, forced exile, property destruction, and violations of their rights to life, liberty, security, and association. It held that customary international law did not define these violations with specificity required by *Sosa v Alvarez-Machain.*[998] Again in Nigeria, injunction for oil pollution is reluctantly granted on ground for public interest. Court has observed this by denying plaintiff's injunction on pollution suit in *Allar Iron v Shell BP Development Nigeria Ltd.*[999]

[994] OPTS provides Nigeria's Oil and Gas Industry with proper policy for the exchange of ideas, knowledge and collaboration and partnership.

[995] See Ayodele-Akaakar, F. O. "Appraising the oil & gas laws: A search for enduring legislation for the Niger Delta region." *Journal of Sustainable Development in Africa* 3.2 (2001): 1-27.

[996] *Amos v Shell BP Nigeria Ltd* and *Seimograph Services v Akpormoro* (1974) 4ECSLR 486 and (1974) SC 119

[997] *Kiobel v Royal Dutch Petroleum Co. et al* No. 06- 4800, 2010 U.S. App. LEXIS 19382, at 1 (2d Cir. Sept. 17, 2010).

[998] *Sosa v Alvarez-Machain* 542 U.S. 692 (2004).

[999] *Allar Iron v Shell BP Development Nigeria Ltd* Suit No. W/89/71 Warri High Court holding in

The court relied on incomprehensive environmental law in Nigeria to award paltry Two Hundred Naira (N200.00) as damages for fish pond in *R v Shell B.*[1000] Apparently, court has not been systematic in decision on oil pollution in Nigeria. In *Umudje v Shell BP Nigeria Ltd*,[1001] the defendant was held liable for case of negligence even though the plaintiff failed to prove his case. The case of oil pollution has been relied on legal Latin maxim of res ipsa loquitur.[1002] Regulation 15 (1)[1003] gives rights and powers on grantees of petroleum licences and leasees (oil companies) include; (i) cutting of down, clearing timber and undergrowth, (ii) making roads, (iii) appropriating water found in the relevant area, construction and maintenance of buildings, installations, drilling platforms, power plants, flow lines, labours, jetties, derricks, facilities for shipping and air craft etc.[1004]

FIGURE 18: OIL SPILLS WEAKENING LAND QUALITY IN NIGER DELTA

SOURCE: http://edition.cnn.com/2015/11/09/opinions/gallery/niger-delta-oil-pollution-gallery/index.html. Accessed on 20/10/2016.

What constitutes environment from the above views is that environment constitutes man, alongside the animate and inanimate creatures that surround him and that which affects man's daily activities. Man, land and mineral resources at their natural state are all integral

[1000] *R v Shell BP Development Co Nigeria Ltd* (1970/72) IRSLR 711. Two Hundred Naira is presently less than Fifty Pence in Britain.

[1001] *Umudje v Shell BP Nigeria Ltd* in Suit No PHC/101/76 Port Harcourt (1979).

[1002] This is a legal principle of law meaning the matter speaks for itself. The court has relied on this to award damages on the plaintiff in *Victor Eleru v Shell BP Development Company Nigeria* (1975) 11 SC 155. This was incorporated into the FEPA Decree 1988. See also Jehwo ibid.

[1003] Petroleum (Drilling and Production) Regulation 1969 as amended supra.

[1004] Such rights are exercised subject to applicable laws and the approval in writing of the Director of Petroleum Resources and "appropriate government agencies and such conditions as they may impose".

component of the environment.[1005] Oil and gas activities create perilous impacts on the environment.[1006] There are different opinions and ideologies to the concept of what environmental pollution and the natural resources envelop as results of products of several billions of years of evolutionary changes.[1007] There is confusion of who is entitled to compensation of oil pollution and what amount of compensation is to be considered fair or adequate.[1008]

FIGURE 19: CONTAMINATED LAND IN NIGER DELTA

SOURCE: http://edition.cnn.com/2015/11/09/opinions/gallery/niger-delta-oil-pollution-gallery/index.html. Accessed on 25/10/2016.

The UN Environment Programme (UNEP) has reported that overwhelming oil spills in the Niger Delta over five decades will cost more than $1bn to remedy and not less than 30

[1005] If breached, it takes man away from his environment, he is emasculated and blotted out of existence and same to his rights from what constitutes environment if breached. Thus, man must strive to keep his environment safe from been polluted or disintegrated from activities of man from every sides of his life.

[1006] See Lord Denning's obiter dictum in *Mcfoy v UAC* (1961) 3 ALLER, 1169 at 1172.

[1007] See Raphael O. Adeoye, "Environmental Rights and Sustainable Development in Nigeria: An Appraisal", Ebonyi State University Law Journal, vol. 3, no.1, pp. 192-217,(22009) p. 193; A. Uchegbu A "The Legal Regulations of Environmental Protection and Enforcement in Nigeria", The Journal of Private & Property Law, vols. 8 & 9, (1987 & 1988), pp. 57-74 at 58; Okpara Okpara, "Effects of War on Environment", (2007) in C.A. Omaka (ed.), *Nigerian Environmental Law Review* (Lagos: Nigerian Environmental Law Teacher's Society), vol. 1, (2009) p. 15.

[1008] Wherever there is disagreement about the person to whom payment should be made in the context and the appropriate amount payable, the state authority automatically becomes an arbiter. This is clearly an arrangement that inflicts enormous injustice on the victims and aggrieved or communities. This practice mandates Oil Company to deposit with the state authority any such sum as shall appear to that authority to be reasonable satisfaction in full or in part of whatever compensation the licensee or lessee may be found liable to pay.

years to clean.[1009] It noted that oil firms have systematically contaminated over 1,000 sq km (386 sq mile) area of Ogoniland, in the region, with ruinous consequences to human health and wildlife existence. It stated that "Nigerians has paid a high price for the economic growth brought by the oil industry". This management is not comparable with Gulf of Mexico spill. In Nigeria, Oil firms choose to burn gases as an alternative of reinjection of the gas into the ground or marketing it. Federal government has announced that flaring will be stopped by 2010.[1010] This target was not met leaving the ecosystem and global community decaying.

FIGURE 20: SWAMPLAND VEGETATION (Bara, Gokana LGA) [1011]

SOURCES: United Nations Environment Programme (UNEP). *Environmental Assessment of Ogoniland* (UNEP 2011) p 71.

[1009] UNEP. 'Environmental Assessment of Ogoniland' http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf. Accessed on 20/10/2016.
[1010] Multinational companies view this as alternative to economic preference. John Vidal. 'Niger delta oil spills clean-up will take 30 years, says UN'. See https://www.theguardian.com/environment/2011/aug/04/niger-delta-oil-spill-clean-up-un. Accessed on 10/10/2016
[1011] Rivers State in Niger Delta Region.

FIGURE 21: SOIL CAKED INTO A CRUST OF DRIED CRUDE

SOURCES: United Nations Environment Programme (UNEP). *Environmental Assessment of Ogoniland* (UNEP 2011) p 86.[1012]

FIGURE 22: A VIEW OF THE BOMU FLOW STATION (K-Dere, Gokana LGA)

SOURCES: United Nations Environment Programme (UNEP). *Environmental Assessment of Ogoniland* (UNEP 2011) p 86 and 99.[1013]

[1012] United Nations Environment Programme (UNEP). *Environmental Assessment of Ogoniland* (UNEP 2011) Pp 71 - 110, noted that the Environmental Guidelines and Standards for the Petroleum Industries in Nigeria (EGASPIN), issued in 1992, issued by the Department of Petroleum Resources, Nigeria. (Revised edition, 2002) setting out the standards which are currently the minimum operating requirement for the oil industry in Nigeria. Note that the Nigerian legislation dealing with soil and water contamination from oil operations is handled by the Federal Government's Department of Petroleum Resources.

[1013] United Nations Environment Programme (UNEP). *Environmental Assessment of Ogoniland* (UNEP 2011) ibid.

FIGURE 23 ABANDONED OILFIELD INFRASTRUCTURE (Bodo West, Gokana LGA)

SOURCES: United Nations Environment Programme (UNEP). *Environmental Assessment of Ogoniland* (UNEP 2011) p 100.

Perhaps, this may be the cause of the proliferations of conflicts against multinational oil conglomerates in Nigeria. Pollution is alleged to be violations of human environmental rights.[1014] The situation is different from countries like the USA, Britain and Canada. As noted, cases had been filed on the Alien Tort Statute[1015] and had cost companies fortunes. This is done where the national laws incorporate human environmental rights. Citizens may have access to justices when their environmental rights are breached. Victims in Nigeria usually do not have the financial capacity to prosecute the defaulting companies in law court. Secondly, s 6(6) (c) and Chapter II of CFRN, particularly s 20 had outlawed this right from being enforced. It provides:

> The judicial powers vested in accordance with the foregoing provisions of this section..., shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

[1014] Drimmer ibid.

[1015] See 28USC & 1350

Nigeria is signatory to some international environmental conventions[1016] but the 'non-justiciable' clause enshrined in s 6(6)(c) is the predicament to achieve required environmental goal. Nigeria courts are reluctant to enforce Directive Principles of States Policy under Chapter II of the constitution. Indian Supreme Court in *State of Madras v Champakan Drairajin****[1017]*** has made bold this opportunity by enforcing it. Article 37 of her is similar with the provisions of s 6(6)(c) in the Nigerian Constitution. Part III deals with Fundamental Human Rights reminiscent of Chapter VI in the Nigerian Constitution. The step is recommended to Nigerian judiciary. In Indian case, the Court held:

> The Directive Principles of State Policy which by Art are expressly made unenforceable by a court cannot override the provisions found in Part III, which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders and directions under Article 32. The Chapter on Fundamental Rights is sacrosanct and cannot be abridged by any legislative or executive act or order, except to the extent provided in the appropriate articles in Part III.[1018]

In discussing the above, Nigeria laws come to mind. S 2 EIA, s 20 (chapter 2) & s 6(6)(c) CFRN whittle down Fundamental Objectives and Directive Principles of State Policy which include Economic, Environmental among others[1019] not being enforced. Decision in *FRN v Osahon*[1020] supports that the constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme law, fountain of all their laws and all provisions need to be fully enforced. Non-justiciability of the chapter II fundamentally affects rule of law, development and accountability by government. The relevance of the African Charter to the present discourse lies in the fact that Nigeria is party to the Charter and has domesticated the Charter under s 12 CFRN. By domestication, the African Charter has become part of Nigerian law as *Abacha v Fawehinmi* noted.

[1016] Such as Amendment to the Montreal Protocol on Substances that deplete the Ozone Layer enforced on 10/4/1996; International Convention on Oil Pollution Preparedness, Response and Cooperation enforced on 13/5/1995; Framework Convention on Climate Change signed on 13/6/92 and enforced on 27/11/94; United Nations Convention on the Law of the Sea signed on 16/11/94 and enforced on 10/12/82 etc.

[1017] *State of Madras v Champakan Drairajin* (1951) AIR SC 226 is a landmark decision of the Supreme Court of India.

[1018] See *State of Madras v Champakan Drairajin supra.* It was noted that the Directive Principles have to conform to and run subsidiary to the Chapter on Fundamental Rights.

[1019] Pursuant to ss 13 – 24 CFRN

[1020] *FRN v Osahon* (2006)10 NWLR (pt 674) p. 264.

All rights in the Charter are seen as being capable of giving rise to enforceable rights and there is no right in the African Charter that cannot be effective enforced as held in *African Commission on Human and Peoples' Rights (African Commission) in Social and Economic Rights Action (SERAC) and another v Nigeria*. It is a formidable impediment to socio-economic development and the entire legal system. Some countries[1021] have now provisions to allow courts to adjudicate on socioeconomic or environmental rights relying on the African Charter on Human and Peoples Rights which should be applicable in Nigeria. India[1022] court noted that her law had judicially made unjusticiable State Policy Directives justiciable. However, in this case, Hegede and Mukherjea JJ held " its aims at making the India masses free in the positive sense without faithfully implementing the Directive Principles, is that it is contemplated by the Constitution. It is proper for Chapter II to guarantee these rights as fundamentally demonstrated in the South African (SA 1995) and Uganda[1023] Constitutions.[1024] The research proposes a reposition of these in Nigeria to correct the aberration.

In *Gabeikoro Nagymaros Project*[1025] it was observed by International Court of Justice that "throughout the ages, mankind has for economic and other reasons, constantly interfered with nature". Badly-managed economic growth damages the environment through air and water pollution, soil contamination and destruction of resources. Economic development is a necessity but it is equally important to improve on environmental quality. For a country of Nigeria's size and geopolitical importance, non-strategic, arbitrary and inadequate efforts on environmental stewardship have present future with negative impacts of economic development or quality of life. In addition, poor environmental conditions drive away foreign investments and tourism that are needed to promote Nigeria's economic growth. Although, there is no internationally known parameter on what level of hydrocarbons constitutes contamination. It is against this contextual imagination that this research proposes that assessments in Nigeria need to be reviewed with international convention standard.

[1021] *Tellis v Boyibay* (1992) SC AIR 1858. A *decision* that conforms with the fundamental Objectives and Directive Principles of the State Policy constitutionally bound in Nigeria.

[1022] See *Bharati v state of Kerala* (1973) 4 SCC 225.

[1023] Uganda constitution 1995

[1024] See Education of *Uunikrish J.P. v State of Andnra Pradesh* (1992) SC AIR. See also, in *Tellis v Boyibay* (1992) SC AIR 1858.

[1025] *Gabeikoro Nagymaros Project Hungary v Slovakia* ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162. Nigeria laws ought to have provided on how oil operations and its effects on human environment should be handled and procedures to accessing justice. Lack of comprehensive laws gives opportunities for anarchy and poor access to social justice in any society.

6.6 CONCLUSION

The finding in this chapter has shown that Nigeria approach needs to be reshaped. When the federal system principle is poorly cultivated, the constitution becomes increasingly irrelevant. A reality emphasized when Venezuelan former president politicized Petroleos de Venezuela (PDVSA), the state-owned oil company, whose output declined by almost half from 2000 to 2011. It is the position of Nigeria when Petroleum Act was legislated taking away oil ownership and management from state. National Nigeria Petroleum Corporation (NNPC) has authority to hold, manage and alienate crude or oil wells.

The current brand of central control model of oil in Nigeria defeats the essence of fiscal federalism. Admittedly, Venezuela has for much of the 20th century leaned towards a more centralized federal system albeit with a brief interregnum of decentralizing policies in the 1990s.[1026] The situation where oil producing states have no right in oil policy at all is undemocratic. Where there are put in the same position as non-oil producing states within a federal character is incongruous and against federal democratic philosophy. The principle of true federalism benefits and supports all levels of governance especially those at grassroots like states and local authorities. The law should consider it because of their familiarity, proximity and acquaintance to the grassroots which the national government may not possess. Inevitably, national priorities are not always local priorities. If the intendment of the makers of constitution was the creation of a strong national government, this could still be possible without excluding oil producing regions from having stake in oil matters. The present idea of oil control under federal structure Nigeria law is old-fashioned. This research calls for reviews and modernization of these laws to bring them to forefront of global trends.

In USA, oil and landownership could be held together. Oil found with one's land belongs to him explicitly while in Canada, the trade and commerce power is the basis for the exercise of federal authority over 'Canadian oil and gas exports'.[1027] This is different with Nigeria NNPC Act. Nigeria bump prices have never been stable but swing and more frequently since subsidy was removed. Nigeria needs to promote the domestic manufacturing of her mineral oils and materials from the non-renewable natural energy. This will create innovative technologies, generating employment and economic growth for

[1026] Allan R. Brewer-Cariás, at p 2.

[1027] On the exportation and not just the mere management as each province is not sovereign as well as over the 'interprovincial movement' of oil and gas. It is difficult for a province to legislate with respect to a commodity which involves transaction taking place at least partly outside the province, 'especially in light of the supreme court's adoption of the "flow theory of interprovincial trade which was adopted by Chief Justice Kerash in Reference to the Farm Products Marketing Act R.S.O.c.F9.1990 in Canada as identified.

the people as conceived by Content Act and PIB. Though, Iraqi's constitution lacks coherent guidelines on oil ownership, however, it gives regional government right to partake in petroleum resources management. An example is the KRG's law on Oil and Gas Law that empowers them to award Production-Sharing Contracts (PSCs) to multinational oil conglomerates. Nigeria has not had such experiences. Even the Petroleum Industry Bill (PIB) and Content Act did not conceive such possibilities.

CHAPTER SEVEN

FINDINGS, ANSWERS TO RESEARCH QUESTIONS, RECOMMENDATIONS AND CONCLUSIONS

7.1 FINDINGS

The research found the following impediments:

1. **Weak legal structures, practice and corruption** – Nigeria has been experiencing problem of weak law practice and poor enforcement on issues of land, mineral and environment. This gives miners chances to go beyond bound in extraction of minerals without considering the environment. On solid minerals, it gives the immediate landowners, local communities and local miner's opportunities to take laws into their hands through illegal mining and lease without due processes. The legal structures in place are frail in terms of the interpretation and application on solid mineral ownership and extraction unlike oil mineral. The court relies on these old laws while legislators appear reluctant to amend them.[1028]

    a. Factory's Act as stated in chapter six of the work, clearly stipulates the criteria that are to be met by a desiring organization. But often, the standards are not met as the company may corruptively have license duly issued by the regulatory body to operate. This is perhaps the biggest problem in occupational health and safety violations in Nigeria with solid mineral miners involving hazardous chemicals or work. These were not conceived by the Nigeria laws. During annual inspection of facilities for solid mineral extraction, some companies that operate under substandard conditions or application are certified as being good and local and non-expert miners go free by fraudulent settlement of the inspectorates. There are some obligations imposed on owners, employers, managers and employees under the Labour Act. This is the only ready piece of legislation available in relation to occupational health and safety.[1029] There are pending bills before Nigeria National Assembly regarding the safety of workers in all occupations. Solid mineral resources cannot be viable without proper legislation, practice and enforcement.

[1028] In default in Nigeria, the penalty for such violations is ridiculously liberal for the extracting corporations. See Workmen's Compensation Act 1897 as enshrined in the 1999 constitution s 4. This Act replaced 1880 Liability Act by Act of UK Parliament.

[1029] The obligations are contained in s.10 (a) of the Labour Act and ss.118-121 of the Labour Act.

b. There are no local or provincial laws that need to be taken into account by mining companies over and above national legislations giving them chances to defy environment. There is no either environmental authorization required to conduct reconnaissance.[1030] Some Bills required for immediate passage in Nigeria are the Occupational Health and Safety Bill; the Labour Standards Bill, Petroleum Industry Bill and the National Health Bill.

2. **Lack of adequate information and statistics of mineral resources in Nigeria** - Most of the statistics and information available come from local news and industrialized countries. Nigeria has no comprehensive statistics of all her solid mineral resources and their importance. This can give good information for better law making and foreign investments. Where statistics exist, it is usually unreliable because it is based on one sector or ethnic-sentiment of the country. This can make country to undermine the importance of her solid minerals giving room for illegal mining or trial and error approach. State do not have right of extracting these minerals and that impacts on occupational health and safety issues on sites. Where there is no federal law, states lacks authority to make one.

3. **Lack of corporate social responsibility-(CSR), political will and accountability** - Some oil and non-oil mineral companies operating in Nigeria are multinational. They have laws that govern their operations in their parent countries. However, when operating in Nigeria, they conveniently forget those laws and operate with a shocking lack of corporate social responsibility and accountability. The cause of this been that Nigeria law often do not contain provisions that will compel total compliance and in some instances may lack prudent enforcement. The fact that certain unpleasant practices are tolerated, even accepted in Nigeria ought not to prevent due process of law or the multinational companies from being socially responsible for their activities.

4. **Mineral ownership and bureaucratic obstacles** - Under the existing laws and regulations in Nigeria, ownership is solely bestowed on the Federal government exclusively. Prospective miners have to process their applications through several layers of subordinate federal authorities. The prospective miners will still need to go through the local landowner or community heads for access to the minefield. It

[1030] Environmental authorization is required in the cases of exploration and mining. At the outset, the Act provides for a community development agreement between the lessee and the host community. The enforcement of this provision is not well felt in states with solid minerals as exemplified in Ebonyi State. So

is expected that they go through the state government for authorization under the LUA and the State Surveyor General for a final survey plan to be drawn before moving to the site. These processes usually result to rise of logistics. It is observed that this is in principle and not in practice that mineral is owned by federal except oil-mineral. Nigeria mines her crude overseas with no local facility functioning.

a. This research calls for a review of land and solid mineral laws and its policies to boast grassroots awareness and development. Only the government has the right to officially take land from an individual[1031] and compensation is poorly given as a result of such applications.[1032] The researcher recommends for review of these laws and miner's various leases' compliances.

5. **Lack of Strict Judicial References** – Nigeria has no judicial precedent on issue bordering on solid mineral exploration and foreign relationship. As noted by the Human Rights Impact Resource Centre,[1033] the lack of strict judicial references means that human rights compliance is not sufficiently embedded in the law such as; mineral and mining law, land law, labour law; health and safety rights. Nigeria was subjected to repressive and undemocratic rule for long periods. Nigeria experienced sudden abandonment of solid mineral sector to oil-mineral preference. Nigeria lacks judicial references precedence as seen in US, UK or Canada and everything about her mineral is solely on oil.

6. **Oil and gas exploration Factor** - Results of huge export earnings derived from oil exploitation with attendant national economic growth, the solid minerals subsector remains stagnant, undeveloped and neglected. The focus of the country is on oil. Now, there is a need to revisit the sector as Nigeria oil economy is derailing leaving the country in economic distress. It is only diversification to solid mineral that will bail Nigeria from her economic doom. The days of total dependency on oil revenues are possibly permanently behind the nation. Ownership and control of solid mineral resources in Nigeria is political thus, needs liberalisation through laws.

[1031] See ss.28-30 of Land Use Act and s.107 of the Act. Laws on solid mineral resources control in Nigeria need to hedge on the spirit of a federated state which will allow for state autonomy and regional devolution. This will make the economic diversity possible and productive.

[1032] See again s 29 of the Act

[1033] Human Rights Impact Resource Centre (HRIRC)(2009)

7. **Poor legal practice** - Nigeria laws are applied and enforced not considering the rapid development in oil and gas sector worldwide due to some influences. It makes it hard to meet required global legal evolving trends.
8. **Petroleum law development** - Oil was found in Nigeria in 1956 but Petroleum law course in Nigeria is largely a new course yet to be explored. This slows pace on the societal awareness and sleeve glove on ownership and control contentions.
9. **Non-governmental Organization impacts** - There is no active Non-governmental Organization to promote public education on rights and law of citizens. Such as the Greenpeace in Britain to justify a number of factors in resource control and its multi-disciplinary nature. The quest had been on how to own, control and manage oil resources and not how to get necessary education of it.
10. **Private right** - There is no protection of private rights and control of mineral resource or land under Nigeria laws as practiced US federal system or Canada. Oil companies now deal with government and not local communities in all ramifications.

7.2 ANSWERS RESEARCH QUESTIONS

Questions seeking for answers in the research found the following responses.

(a) Rightly and legitimately owner of lands and controller of its minerals including the oil and gas resources under the Nigeria laws need democratic ratifications. Exclusive ownership model was military decree and old laws. Its phenomena make non-oil minerals ill-attractive and push for mono-economy which weakens the law as much as her economy.

(b) Rationale behind land nationalisation rooted in Land Use Act is vague which makes it subject of controversy and litigation. It contradicts s 43 of CFRN that provides for citizens' property rights. This requires amendment. Under EU Charter of Fundamental Rights (Article 17 - Right to property), everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions without deprivation except in the public interest subject to fair compensation. Its use may be regulated by hence, it's for public interests.

(c) Nigeria constitution s.43 did not define movable and immovable property. But by LPA definitions and interpretations of land and mineral, each cannot be excised from the other. This liberalises mineral ownership under US and Canadian laws which is necessary in Nigeria. Its ownership does not warrant total ownership by government alone. UN Charter provides, "the UDHR Article 17: Everyone has the right

to own property alone as well as in association with others. No one shall be arbitrarily deprived of it without proper course.

(d) Natural resources should be owned under statutory and customary laws in Nigeria and governor's assignment should make Certificate of Occupancy whether customary or statutory irrevocable under LUA. LG chairman should be provided with such proviso under s 9 LUA.

(e) Nigeria laws on land acquisition and qualifications for compensation as contemplated by s.29 LUA and s.44(1) CFRN for mineral exploration need expansion to conform to international standard considering what follows oil exploitation. Notice of acquisition and compensation need to be reasonable. The ideological status of LUA outside its intended utility or social justice objective is to weaken landowner's rights, control and explore them. It lacks institutional policy, coherency and lack of proper legislative debates. The Indian Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (known Land Acquisition Act, 2013) requires a place in Nigeria law. The Act regulates land acquisition and lays downs procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons. It provides fair compensation to victims with transparency to the process and establishes regulations for land acquisition massive industrialization driven by public-private partnership.

(f) Protective mechanism for land rights, mineral resources, explorations and environmental sustainability need to be reflected with international laws. The amendment of s 12 of CFRN is desirous to allow states with legislative powers to adopt international conventions on environment and possibilities of repudiating oil pollution. The research observed that laws governing compulsory acquisition in Nigeria have gone out trend. It drew attention of imperative factors for environmental stability, legislative and judicial processes embedded on rule of law. This should apply to mineral and landownership, to ensure its intergenerational transfer free from legal or social conflicts. African nations' land is owned by the state but operate under customary law without formal legal titles. Therefore, the existing rights to land and natural resources need to be recognized and respected. Such unguided acquisition leads to tenure insecurity and landlessness that by implication hampers human development and sludge citizens into dearth of needs. The landlessness is being exacerbated by Nigeria laws and government who nationalised land and increasingly seeking to acquire large tracts for mineral

exploitation, government layout and other industrial uses. The procedure for accessing land and natural resources with its associated investments need to be legal, transparent and monitored within a proper administrative, legal, and regulatory setting.

(g) There is no human environmental right under Nigeria laws (Chapter II (s 20)) because of s 6(6)(c) that makes it non-justiceable and unforceable before any court of law. Environmental impacts from mineral exploitation needs to be quantified with standard method to encourage sustainable resource utilization. Enormity of risks and negative impacts should be minimized or mitigated. Our finding has shown that the law that makes Chapter 2 non-justifiable has gone out of faction. This has evolved in South Africa and Uganda among other nations western world. It was fundamentally demonstrated by Indian Court in *Education of Uunikrish J.P. v State of Andnra Pradesh* and *Tellis v Boyibay* and *Bharati v state of Kerala where the court* justified environmental rights for citizens.

7.3 RECOMMENDATIONS

The research recommends the following to settle conflicts of mineral, landownership and environmental sustainability in Nigeria.

i. There is lack of comprehensive land and mineral laws to regulate and support fiscal federalism with state autonomy. The approach to oil is different to non-oil minerals. Her environmental law does not cover environmental challenges from mineral activities and enforcement procedure is weak, thus, requires new legal regime. Nigeria constitution and Land Act require overhaul due to their military background.

ii. African traditional landownership theory that supports tripartite ontological relationship between land, mineral and environment is lost. The practice needs to be reconceptualised and modernised to liberalise central exclusivity theory. This will promote and protect property rights from imminent extinction. It will secure land security and break cycle of poverty and conflicts over-bound.

iii. Communities and states of oil region need to be involved in oil management and contractual arrangements with multinational corporations through law.

iv. PIB and Content Act need to be passed and fully enforced. Nigeria LUA ss.34, 36 and CFRN s.43 should be expanded to allow for private mineral ownership. Every

compulsory acquisition should be given legislative approval and LUA needs to be excised from CFRN.

v. Tasks of environmental challenges can be resolved with combined efforts of all stakeholders and not by only federal Agencies. Environmental polluter pay principle is advocated to replace Nigeria command and control practice.

vi. Non-justiciability clause of chapter 2 (s.20) by s.6(6)(c) CFRN affects environmental rights and judiciary in adjudication of the law thus, needs repealing.

vii. Due to ethnic and regional sentiments, Nigeria needs pluralised legal and political approach to the contended conflicts. There is need for inclusive government, regional and political renegotiations, power devolution and amendment of present laws to allow for fiscal federalism.

7.4 CONCLUSION

The research revealed that Nigeria Land, mineral and environmental laws regime disregard the importance of livelihood as purpose of inhabitation in compensation issues. Impacts of mineral activities on land negatively affect man and his conservatory activities. The Land Use Act focuses on compulsory acquisition for overriding public purposes in which could be for government structures, mineral exploitation or other infrastructural development. The primary aim was to nationalise Nigeria land. Too, only pipeline laying and mere mining issues were mentioned because Nigeria has not had its oil booms prior to its promulgation. Government and oil companies need to adopt a total economic value in quantifying oil bearing land value.[1034] This led to the impracticable application and concept to compensation practice in Nigeria under the law. The anomaly is the application of non-professional approach to value or determination of land which discontents oil bearing communities. The use of private property interest value to pay less compensation is wrong law and against international practice.

Legally and logically, economic value of any land should emanate from its natural functions and economic uses. Land values should be directed from its use values derived from economic uses like farming, fish harvest, timber logging, places of worship, markets, and playgrounds, private, communal buildings etc. These are values that are not related directly to any use. But, there is concept of indirect land use values. This springs from

[1034] Not a private property interest value approach, undervaluing the compensation payable to acquired land but a total economic value concept and reflect same on public market goods in determining compensation for land and pollution cases. The lacuna found in LUA s.29 was short-sight by its incomprehensive provisions.

protection, occupier-based principles and supportive functions provided to the economic uses, non-use and land preservation values. Nigeria land sustains enormous non-market informal activities supporting individual artisanal, fishing, gathering of sea foods, hunting and firewood collection, timber business, and building materials.[1035] Doctrinal approach gave the researcher good sense of examination of land, mineral and environmental laws and it was related to land value, acquisition, compensation, enforcement and general activities of oil exploration.

S 29 (4)(a) LUA, provides that in acquiring land compulsorily, compensation should be an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked. This failed to capture full details of what compensation is required because; rent is a constant payment while compensation is paid once. Valuation of an oil bearing land should be seen as an Environmental Management Aid (EMA). It will lead to a better decision-making in the quest of ensuring sustainable development of Nigeria especially mineral zones. The provision did not provide understandable guidelines on valuation and compensation for land acquired for minerals conceiving its pollution and other environmental issues from the activities. The laws are vague with no administrative, professional and enforcement mechanisms in the assessing compensation.

Oil environmental pollution is covered by some international conventions that Nigeria is signatory but less concern with those conventions. Nigeria is a coastal country stand risks of serious pollution and domestic legislations are not adequate to cover such issues where occurred. Thus, it should take advantage of those international laws to protect her environment. This will give her grounds of any environmental threats or damages as dumping activities are major causes of oil pollution in Africa.[1036] It would be wrong to consider the enforcement of environmental laws as disincentive to industrialisation or an investment. Having in mind that development which is not sustainable is not development in its totality. The human environment must not be seen to be protected but must be protected with every legal instrumentality to advance its sustainability and avoid its total collapse. The entire procedure for grant of oil pipelines permits and licenses does not provide adequate protection to local communities or environment that may be adversely affected.

Again, Oil Pipeline Act is imprecise on issue of compensation where it provides: “if there would be any dispute to whether any compensation is payable under any provision of this

[1035] Compensation provisions under these laws for land and sea for that magnitude purposes as currently practiced, disregard the value composition of such lands the same way previous literatures treated it.
[1036] Koko port toxic dump in Nigeria in 1988 was such example as earlier noted.

Act or if so as to the amount…, such dispute shall be determined by a station magistrate exercising civil jurisdiction in the area…"[1037] It provides for right of appeal by any party. Note, magistrate courts in Nigeria have limited jurisdictions especially in determination of huge sums of money as this may result. This may lead to limitless litigations. S.19 states that nothing in this Act shall be deemed to confer power upon a magistrate to exercise jurisdiction in a matter raising any issue to title to land or any interest in land. This confusing phrase may give lawyers leeway to keep the courts perplexed with issues of jurisdiction.

S 20 of the said Act and s.29 LUA limited compensation to only development like buildings, crops or profitable trees' and not "land's value, waters or its surroundings". Where it does, it skeletally states, 'loss if any"[1038] in the value or interest in land'. Land ought to be the subject of compensation but, the Act focuses on "only developments on land" which forms the land too. Making it onerous for none developed land, s.20(4) says; "no compensation shall be awarded in respect to unoccupied land as defined in the LUA, except to the extent and in the circumstances specified in that Act". Activities on land may destroy its future use and the resources derived thereunder are not renewable. Therefore, laws and explorers must take notice of the needs to guard and restore the balance of the ecosystem where possible.[1039] Government and stakeholders should opt for negotiation on the entire policy and regulatory framework within which the oil and gas industry operates instead of tedious litigation or waiting for long risky trials.

Like other merchandises, land's value goes with inflation and trend of development. The stagnated provisions will lead to huge loss if value goes retrospectively and not with the present value when the injury is done. To determine compensation, Oil Pipeline Act notes that court shall apply the provisions of the Land Act so far as they are applicable and not in conflict with anything in it "if the land or interests concerned were land or interests acquired by the president for a public purpose".[1040] This Act did not empower the president of Nigeria to formally revoke or acquire land.[1041] This may be responsible for the fight of supremacy between states and federal on ownership of land and minerals. Acquisitions and

[1037] See s 19 of the Act.

[1038] Oil Pipelines Act 1956 as amended. See s 20 (2) (e) ibid.

[1039] See Oil Pipelines Act 1956 as amended particularly (Part IV) s 19 and s 20 and Land Use Act in s 29.

[1040] In determining the loss in value of the land or interests inland of a claimant, s 20(3) of Oil Pipeline Act gives the court the power to assess such value or the interests injuriously affected on the land "at the date immediately before the grant of the licence and shall assess the residual value to the claimant of the same land or interests consequent upon and at the date of the grant of the licence and shall determine the loss suffered by the claimant as the difference between the values so found, if such residual value is a lesser sum".

[1041] See s 28 op cit. Note that there is exception under s.51(2)LUA.

compensations damages need to be conducted by special committees of professional valuers and solicitors with local communities to ensure the valuation of compensations.

The present law denies the people benefits of participation in the use and management of land and mineral resources nor equitable quota or dividends of the revenue yields. The provisions of the 1963 constitution s 140 (6) provided for payment of rents, royalties and others proceeds from minerals. It noted that, "the continental shelf of a Region (littoral states in this case) shall be deemed to be part of the Region" needs to be reversed and revered. This will customarily modify these Acts which dispossess the oil-producing communities of their land and its contents. These Acts are silent on the land use and reclamation of mined land. It is expected that the government, at local, state, federal levels and mineral industries engage in some form of land reclamation. This is important so that they can use the areas for farming and this should be fully provided by the law.

Previous literatures focused on scientific issues on oil and environment while giving political approaches to landownership, minerals and compensation. These made the management of land, mineral and environment herculean tasks under Nigeria laws. It is critical common element in respect to human rights, when that right is deemed breached; the results may be stark.[1042] Non-compliances and implementations of the above may not only affect the human environment but fauna and flora. Government and oil companies should redouble efforts in re-orientating Nigerians towards imbibing environmentally friendly attitudes. This is by avoiding taking actions that debase, undermine or destroy the ecosystem.[1043] The legislators need to re-assess these laws to give the judiciary better adjudication strength.

It is important that the Nigeria constitution, Petroleum Act and LUA are amended and decision in *Abia case* reviewed. This will allow for state autonomy or fiscal federalism over control of land and mineral resources as witnessed in the US and Canada. The derivative principle formula should be extended to continental shelf of Nigeria as provided by law of the Sea Convention Treaty, Article 76 already ratified by Nigeria.[1044] The demarcation of maritime zones for aims of derivative principle should be in consonance with established principles of public international laws. The Nigeria logic that one could own land and another owns its mineral contents is military decree promulgate by

[1042] See J. C. Drimmer and S. R. Lamoree op cit.

[1043] The essence of law is to define orderliness and equitable approach to ranges of discussions this research has made. The current valuation techniques can be modified to derive the total economic value of an oil bearing land and after math of oil activities on the environment.

[1044] See s 140 of the 1963 constitution ibid.

unsophisticated logicians or draftsmen. The laws were weighed on balance of probability and found lacking in coherence and federal cohesion.[1045] Without security of food and shelter, there will be no human freedom. Nigeria legal theorists should take example of the Alaska where accruals from oil natural resources are ploughed into an account as excess money and all aboriginal inhabitants are genuinely authorised to access it.

Quest for resource control simply implies the wishes of the people and government in regions where the resources are been exploited. They should exercise due diligence and require legal rights over these recourses to manage, use, enjoy or abuse it. It is a demand that may not be quashed or faulted by any democracy or federal system so soon. The legal and philosophical pendulum will continue to swing among local communities, state and federal if the present theory subsists. The 'veritable alternatives' hinge on broad shoulders of legislative, judicial and political doctrines' solution. The *Abia case* decision has not rested the tensed resource quest between communities, states and federal of Nigeria or fill gaps in Nigeria laws.

Despite federal exclusive mineral regime, Nigeria constitution still provides for a 'Derivation Formula'[1046] for oil states with 13% extra from federal allocation. The interest led to the *Abia case* where "seaward boundary of littoral States was called as a matter of law. What became factual, and on which evidence it required to be proved, is the actual location of that boundary".[1047] Relying on *Pioneer Plastic Containers Ltd*[1048]the court noted that "where there are no issues of fact on the pleadings, no evidence needs to be adduced." There was no Nigeria law that provides for such answer and court forgot it has right to make rules where lacuna exists. This forced her court to import *US Texas* decision in *Abia case*. There is need to fill up this gap where these should be specifically spelt out. It is also important to repeal provision of second schedule, part 1 (39) of the constitution. Thus, instead of contenting Nigeria with bailouts, 13% derivation or monthly allocation, the nation needs fiscal federalism. This will give states legal rights to explore their oil and solid mineral potentials. They will, in turn, take full responsibility for the welfare of their citizens. The law should stop federal allocation and provide that states remit certain percentages of their accruals to federal.

[1045] They will fail to meet the human security across the country.
[1046] See again the Constitution 1999 s 162(2) supra.
[1047] ibid
[1048] *Pioneer Plastic Containers Ltd. v Commissioners of Customs and Excise* (1967) Ch. D. 597.

Notwithstanding the landmark decision in *Abia case,* it failed to put to an end to the contended issues of oil ownership in Nigeria. The decision has been delivered but the ghost of the argument has refused to rest and the philosophical pendulum continues to swing 'to and fro' over a decade. The solutions to these conflicts are not only judicial or legal but a combination of social-legal and socio-political philosophies. The communities, states, regions of petroleum resources need to be engaged in a discussion with government and oil companies. This clarification concept of constitutional and political doctrine will give a full realization of peace and economic exploitation of these resources. It will give legislature and judiciary enabling environment for law making and adjudication. As noted earlier, the veritable alternative hinges on the broad shoulders of legislative, judicial and 'political doctrine'.[1049]

From doctrinal viewpoint, what underscores a legislative monopoly is the liberalisation of land and mineral resources' ownership or control. This will repeal the omniscience of the federal government dominance of mineral management. Oil contractual agreement should be made subject to approval by legislative arm. Without the approval of legislature, no contract shall be entered into for the nation, except as may be necessary for the normal development of public administration permitted by law. Mineral explorers need not proceed to site in any case if granted new concessions of oil without legislative authorization. As exemplified in Venezuela, no oil company enters into any contract of national public interest, state or municipal foreign States or official entities or with companies not domiciled in 'Venezuela', or transferred to them without congressional approval. This precedent needs to be considered in Nigeria to enable law take prominence in mineral management.

As chapters 2 and 3 noted, property rights have been seen as part of human rights. Such as movable and immovable property provides by s 43 CFRN. Their uneasy affiliation has made their protection unpredictably against state fundamentalists to promote rule of law. These have been contended by international legal frameworks to reconcile domestic interests. It is not only related to right of ways or access to water but with respect to land and natural mineral resources. It may be right to say that there would be no mineral resources without land holding it onshore or offshore. If the state has control over state land, they should have control over the resources of their land including maintaining good environment to promote their tripartite ontological relationship which now requires legislative framework.

[1049]S. A. Ogba. (2014) ibid at p. 14.

It is been asked if protection of land rights could go beyond human relationships to natural resources within the unincorporated local communities. Exclusivity distinguishes communal resources' rights from public right of way. Exclusive communal rights over their resources seem to be what the state is required to be socially and explicitly protected. The exclusiveness of ownership of land and minerals need not reside solely with the federal but with states and individual-citizenry. The ownership of land, minerals and environment and their usages whether communally or privately should be respected and protected by law. Nigeria needs specific law for specific property and its activities. There should be an acquisition law, compensation law, exploration law, tribunals for compulsory acquisitions of land and environmental degradation compensations. These should be handled by experts and not formal courts. Compensations for land and pollution should be distinguished. Land acquisition needs to be considered on its purposes acquisition while pollution compensation should consider land value, environment and livelihood. These need to be clearly specified in the law to resolve the contended legal issues.

The researcher concludes thus:

i. The idea of federal mineral and state landownership has led to societal landlessness and severe poverty in Nigeria.
ii. S.29 LUA, s.44 CFRN and s.2 EIA on issue of compensation and environmental compliances did not spell out what is to be compensated as compulsory acquisition involves mineral exploitation and other overriding public purposes.
iii. Existing laws and practices appear weak to tackle the contentious issues here thus, need reviews. LUA s.28, 29 and CFRN ss.6(6)(c and 44 have left land, mineral and environment devastated and breeding conflicts.
iv. Nigeria needs a democratic constitution, promotion of Content Act and PIB to overhaul her land and mineral legal intrigues.
v. The research calls for liberalization of Nigeria land and mineral laws to allow for state autonomy and fiscal federalism. If mineral and landownership is liberalized, it will support economic diversification and promote human capacity development to create of jobs. It will resuscitate local, foreign investments and prosper grassroots development and condense central exclusivity, hostilities in oil region and political aptitude problems with quick fiscal growth. This will promote competition and states with non-oil minerals will use the opportunity to develop their natural endowments to enhance their internal revenue generation instead of relying on monthly federal allocation. It will reduce Nigeria's micro and mono-economy.

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APPENDIX

APPENDICE 1: SOLID MINERALS CONTRIBUTION TO GDP IN NIGERIA FOR 2006 TO 2014

Year	2006	2010	2011	2012	2013	2014
Percentage %	0.28	0.34	0.36	0.6	0.6	0.6

SOURCE: National Planning Commission (2006) Economic Performance Review at p. 5; National Bureau of Statistics: Economic Outlook Report (2011) at p.15.

APPENDICE 2: SOLID MINERAL RESOURCES DEPOSITS IN EBONYI STATE NIGERIA AND THEIR USES.

S/N	NAME/MINERAL RESOURCES	AREA/LOCATION	DEGREE OF EXTRACTION/ DORMANCY	USES
1.	Brine (salt)	Uburu, Okposi in Ohaozara LGA; Ameri IIkwo LGA	Dormant	Refining yields native salt, caustic soda, sodium hypochlorite
2.	Barites	Nwezenyi-Igbeagu Izzi LGA & Ivo LGA	Dormant	Drilling mud in oil and gas companies
3.	Lead-Ore	Onicha LGA; Enyigba in Abakaliki LGA; Ameka in Ezza North LGA; Ameri in Ikwo LGA; Ivo LGA, Nkpuma-Akwaokuku; Nkpuma-Akapata	Partially Exploited	Pencils, Solders, Bearing, Batteries, Alloys, Ammunitions, Bronze etc
4.	Iron Ore	Enyigba in Abakaliki LGA; Izzi LGA	Locally Exploited	Used for the production of machine parts
5.	Copper-Ore	Onicha LGA; Enyigba in Abakaliki LGA; Ameka in Ezza North LGA; Ameri in Ikwo LGA; Ivo LGA, Nkpuma-Akwaokuku;	Partially exploited	Alloy making, electric conductors etc

S/N	NAME/MINERAL RESOURCES	AREA/LOCATION	DEGREE OF EXTRACTION/ DORMANCY	USES
		Nkpuma-Akapata		
6.	Zinc-Ore (Sphalerite)	Onicha LGA; Enyigba in Abakaliki LGA; Ameka in Ezza North LGA; Ameri in Ikwo LGA; Ivo LGA, Nkpuma-Akwaokuku; Nkpuma-Akapata	Partially exploited	Alloy making, lithographic plates, galvanizing etc
7.	Limestone	Nkalagu in Ishielu LGA, Amoffia Ngbo in Ohaukwu LGA	Partially and locally exploited	Cement making, animal feeds, road, building & construction works, glasses, water treatment, tanning, chalk etc
8.	Kaolin	Ozizza Beach, Ndibe Beach in Afikpo North LGA; Afikpo South LGA; Ishiagu in Ivo LGA	Locally exploited	Ceramincs, pharmaceuticals, Paints, detergents, rubber, agricultural uses, steel.
9.	Granite	Ishiagu in Ivo LGA, Otam in Izzi LGA	Partially exploited	Chippings for roads works, building construction works etc.

S/N	NAME/MINERAL RESOURCES	AREA/LOCATION	DEGREE OF EXTRACTION/ DORMANCY	USES
10.	Sands	Afikpo North LGA, Uburu in Ohaozara LGA, Ikwo, Ezza & Ishielu LGAs	Highly exploited locally but not with mechanized equipments	Mortar, concrete production, used generally for construction works.
11.	Marble Stone	Ishiagu in Ivo LGA & Ezza North LGA	Locally exploited	Building and art works
12.	Gypsum	Agaga-Amangwu Edda in Afikpo South LGA, Amoffia Ngbo in Ohaukwu LGA & Okpoto in Ishielu LGA;	Dormant	Cement production, plastics, chalks, pharmaceuticals etc.
13.	Phosphates	Ishielu & Afikpo South LGA	Dormant	Fertilizer and detergents
14.	Chalcopyrite (fool's gold)	Enyigba in Abakaliki LGA, Ishiagu in Ivo LGA	Dormant	Ornaments, used for gold plating, power generation etc.
15.	Coal/Lignite	Enohia, Ozizza, Ndibe, Ubeyi in Afikpo North LGA	Dormant	Energy and power generation, batteries, pencils, make-up kits etc.
16.	Pyrites	Enyigba in Abakaliki LGA	Dormant	Motor brushings, vehicle parts etc

S/N	NAME/MINERAL RESOURCES	AREA/LOCATION	DEGREE OF EXTRACTION/ DORMANCY	USES
17.	Quartz	Abakaliki and Izzi LGAs	Partially exploited	Making of glasses, diode, scientific equipments etc
18.	Fluorite	Ivo LGA	Dormant	Utilized in optics and metallurgy
19.	Marcasite	Ezza South LGA	Partially exploited	Valuable materials for the production of sulphuric acid etc
20.	Ilmenite (Iron Titanium Oxide)	Abakaliki LGA	Dormant	Used as pigment in paint manufacturing companies, feed stocks for the production of white pigment and titanium sponge etc
21.	Fullers Earth	Uwanna in Afikpo LGA	Dormant	Foundry, glasses, abrasives, oil wells and breweries, electronics, water filtrating etc.

S/N	NAME/MINERAL RESOURCES	AREA/LOCATION	DEGREE OF EXTRACTION/ DORMANCY	USES
22.	Dolerites (Pryoclastics)	Nkaliki in Abakaliki LGA	Locally exploited	Road and building construction etc
23.	Copper Ore	Enyigba in Abakaliki LGA and Izzi LGA	Locally exploited	Making for wire, alloy etc
24.	Laterites	All over/across Ebonyi State	Locally exploited	Construction work generally
25.	Crude Oil/Natural Gas	Edda in Afikpo South LGA	Dormant	Energy and power generation

Source: *Department of Cement Production and Mineral Development, Ebonyi State, Abakaliki, Nigeria,* 'Hydrated lime is a bye-product of limestone. It is in health application and effective acid neutralizer', Stakeholders Workshop on Harnessing the Economic Potentials of Limestone as an Industrial Mineral, "Production of Hydrated Lime, Organized by the Raw Materials Research and Development Council (RMRDC) in collaboration with the 6th September, 2012).

APPENDICE 3: 34 BRAND SOLID MINERALS TYPES AND LOCATIONS IN STATES OF NIGERIA.

S/N	**Non-Oil Minerals**	**Locations**
1.	**Barytes (Barite)**	Benue, Cross River, Nasarawa, Plateau, Taraba and Zamfara States
2.	**Bentonite (Clay)**	Borno, Edo, Kogi, Ogun and Ondo States
3.	**Bismuth Minerals**	Kaduna State
4.	**Bitumen and Tar Sand**	Edo, Lagos, Ogun and Ondo States
5.	**Cassiterite**	Bauchi, Cross River, Kaduna, Kano, Kogi, Nasarawa, and Plateau States
6.	**Clays, Sand and Gravel**	All 36 States of Nigeria, including Abuja Federal Capital Territory
7.	**Coal**	Abia, Adamawa, Anambra, Bauchi, Benue, Cross River, Delta, Ebonyi, Edo, Enugu, Gombe, Imo, Kogi, and Nasarawa States.
8.	**Columbite**	Bauchi, Cross River, Kaduna, Kano, Kwara, Nasarawa & Plateau States & Abuja.
9.	**Diatomite**	Yobe State.
10.	**Feldspar**	Bauchi, Borno, Kaduna and Kogi States and Abuja Federal Capital Territory.
11.	**Fluorite (Fluorspar)**	Bauchi, Ebonyi, Plateau and Taraba States.
12.	**Gemstones**	Bauchi, Kaduna, Kogi, Kwara, Nasarawa, Niger, Plateau, Ogun, Oyo & Taraba.
13.	**Gold**	Abuja FCT, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Niger, Oshun & Zamfara.
14.	**Gypsum**	Adamawa, Benue, Edo, Gombe, Ogun, Sokoto and Yobe States.

S/N	**Non-Oil Minerals**	**Locations**
15.	**Ilmenite**	Bauchi, Cross River, Kaduna and Plateau States.
16.	**Iron Ores**	Bauchi, Enugu, Kaduna, Kogi, Nasarawa and Zamfara States and Abuja FCT.
17.	**Kaolin (Clay)**	Anambra, Akwa Ibom, Bauchi, Ekiti, Imo, Katsina, Kebbi, Kogi, Ogun, Ondo, Plateau and Rivers States.
18.	**Lead Ore**	Bauchi, Cross River, Ebonyi, Nasarawa, Plateau, Taraba, Zamfara & Abuja FCT.
19.	**Limestone**	Abia, Adamawa, Benue, Cross River, Ebonyi, Edo, Gombe, Kogi, Nasarawa, Ogun, Sokoto, Taraba & Yobe States.
20.	**Lithium Minerals**	Kaduna, Nasarawa, Niger and Zamfara States.
21.	**Kyanite**	Kaduna and Niger States.
22.	**Magnesite**	Adamawa and Zamfara States.
23.	**Manganese Minerals**	Katsina, Kebbi and Zamfara States.
24.	**Marble**	Edo, Kogi, Kwara, Nasarawa, Niger and Oyo States and Abuja FCT.
25.	**Mica**	Ekiti, Kogi, Kwara, Nasarawa and Oyo States.
26.	**Molybdenite**	Plateau State.
27.	**Phosphates**	Imo, Ogun and Sokoto States.
28.	**Rutile**	Bauchi, Cross River, Kaduna and Plateau States.
29.	**Silica Sand**	Delta, Jigawa, Kano, Lagos, Nasarawa and Ondo States.
30.	**Silver**	Ebonyi, Kano, Plateau and Taraba States (associated with lead-zinc ores).
31.	**Talc**	Ekiti, Kaduna, Kogi and Niger States.
32.	**Tantalite**	Bauchi, Cross River, Ekiti, Kaduna, Kano, Kogi, Kwara, Nasarawa, Niger, Osun and Plateau States.

S/N	**Non-Oil Minerals**	**Locations**
33.	**Wolframite**	Bauchi, Kaduna, Kano, Kwara, Nasarawa, Niger and Zamfara States.
34.	**Zinc Ore**	Cross River, Ebonyi, Kano, Plateau, Taraba and Zamfara States and Abuja FCT.

SOURCES: EITI Implementation: Application of EITI to the solid minerals sector in Nigeria via http://www.neiti.org.ng/index.php?q=events/2012/mar/papers-presented-neiti-national-conference. 20/4/2016 .

TABLE 1: ANALYSIS OF ENVIRONMENTAL IMPACTS OF PETROLEUM OPERATIONS IN THE NIGER DELTA

Activities	Potential associated risks	Environmental, health and safety issues
Exploration operations		
• Geological survey • Aerial survey • Seismic survey • Gravimetric and magnetic survey • Exploratory drilling • Appraisal	a. Noise pollution b. Habitat destruction and acoustic emission c. Drilling discharges e.g. drilling fluids (water based and oil based muds) and drill cuttings d. Atmospheric emission e. Accidental spills/ blowout f. Solid waste disposal	Ecosystem destruction and interference with land use to access onshore sites and marines resource areas; environmental pollution (air, soil and controlled water) and safety problems associated with the use of explosives; land pollution which affects plants and pose human health risks; groundwater contamination and adverse effects on ecological biodiversity.
Development and production		
• Development drilling • Processing: separation and treatment • Initial storage	a. Discharges of effluents (solids, liquids and gases) b. Operation discharges c. Atmospheric emission d. Accidental oil spills e. Deck drainage f. Sanitary waste disposal g. Noise pollution h. Transportation problems i. Socio–economic/ cultural issues	Ecosystem destruction and interference; contamination of soils and sediments with petroleum–derived wastes; atmospheric emissions from fuel combustion and gas flaring/venting; environmental pollution (air, soil and sediments, controlled waters) and groundwater contamination; ecological problems in the host communities, adverse human health risks; safety related risks and interference with socio–cultural systems.
Decommissioning and rehabilitation		
• Well plugging • Removal of installations and equipment • Site restoration	a. Physical closure/removal b. Petroleum-contaminated waste disposal c. Leave in situ (partial or total) d. Dumping at sea	Environmental pollution and human safety; pollution related to onshore and offshore operations; hazard to other human activities such as fishing and navigation; marine pollution, fishing and navigation hazards
Refining of petroleum products		
	a. Atmospheric emissions and air pollution b. Discharges of petroleum-derived wastes	Atmospheric emissions and air pollution; oil spillages; water effluents and production discharges.
Transportation and distribution		
• Pipelines • Barges, ships, tankers and FPSOs • Road tankers and trucks	a. Emissions and accidental discharges b. Discharges from transporting vessels e.g. ballast, bilge and cleaning waters	Air emissions (hydrocarbons from loading racks and oil spills); accidental discharges and operational failures; disposal of sanitary wastes; contamination of soils and sediments.
Marketing operations		
• Product importation • Storage	a. Operational discharges b. Wastes disposal	Spillage; contamination of soils and sediments; emission of organic contaminants and environmental pollution.

SOURCE: Aniefiok E. Ite et al. Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta. (American Journal of Environmental Protection, Vol. 1, No. 4, doi:10.12691/env-1-4-2, 2013) Pp 78-90.